(17)

No. 01-332

IN THE

Supreme Court of the United States

BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE COUNTY and INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE COUNTY,
Petitioners,

v.

LINDSAY EARLS and LACEY EARLS, minors, by their next Friends and parents, John David and Lori Earls, and DANIEL JAMES, a minor, by his next friend and mother, Leta Hagar,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 24, 2001
CETIORARI GRANTED NOVEMBER 8, 2001

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Order of the United States Court of Appeals for the Tenth Circuit Denying Petition for Rehearing and Suggestion for Rehearing En Banc issued May 30, 2001 ..... Pet. App. B at 46a

Order of the United States Court of Appeals for the Tenth Circuit Granting Appellants' Application for Appeal Related Attorneys Fees, Costs and Expenses issued July 3, 2001 ..... Pet. App. C at 47a

Order of the United States District Court for the Western District of Oklahoma Granting Defendants' and Denying Plaintiffs' Motion for Summary Judgment issued March 9, 2000 ..... Pet. App. D at 50a

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Amended Judgment of the United States District Court for the Western District of Oklahoma in Favor of Defendants and Against Plaintiffs issued March 24, 2000.....Pet. App. F at 80a

IN THE

Supreme Court of the United States

No. 01-332

BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE COUNTY and INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE COUNTY,
Petitioners,

v.

LINDSAY EARLS and LACEY EARLS, minors, by their next friends and parents, John David and Lori Earls, and DANIEL JAMES, a minor, by his next friend and mother, Leta Hagar,
Respondents.

DOCKET ENTRIES

DATE	PROCEEDINGS
8/18/1999	Respondents file Complaint for Declaratory and Injunctive Relief in the United States District Court for the Western District of Oklahoma
8/24/1999	Answer to Complaint filed by Petitioners
11/17/1999	Motion for Summary Judgment and Brief in Support filed by Petitioners
12/8/1999	Brief Amici Curiae by Washington Legal Foundation; Sen. Don Nickles; Sen. Judd Gregg; Gov. Frank Keating; Rep. Fred S. Morgan; Oklahoma Secondary Schools Activities Association; Allied Educational Foundation; Gayla D. Duke; Rhonda Ellard; Debra Fletcher; Bobbette Hamilton; Jimmy and Sheila Jordan; Michael and Kim

DATE	PROCEEDINGS
	Rawls; Stewart and Roshel Stabel; Kenneth A. Stanley; Kris Steele; Clyde L. and Gail A. Topping; Mike and Valerie Tucker; Steve and Lynne Young filed in support of Petitioners regarding Motion for Summary Judgment
12/28/1999	Response in Opposition to Motion for Summary Judgment filed by Respondents
12/28/1999	Motion for Summary Judgment and Brief in Support filed by Respondents
12/28/1999	Appendix, Volumes I and II, filed by Respondents regarding Motion for Summary Judgment filed by Respondents
1/24/2000	Petitioners file Reply to Respondents' Response in Opposition to Petitioners' Motion for Summary Judgment
1/24/2000	Petitioners file Response to Respondents' Motion for Summary Judgment
1/31/2000	Respondents file Reply to Petitioners' Response to Respondents' Motion for Summary Judgment
3/1/2000	Parties file Joint Pre-Trial Report
3/1/2000	Petitioners file Proposed Findings of Fact and Conclusions of Law and Trial Brief
3/1/2000	Respondents file Proposed Findings of Fact and Conclusions of Law and Trial Brief
3/1/2000	Respondents file Motion in Limine re: Hearsay Evidence of Drug Use and Memorandum of Points and Authorities in Support

DATE	PROCEEDINGS
3/1/2000	Respondents file Motion in Limine re Relevancy of Parents' Testimony and Memorandum of Points and Authorities in Support
3/2/2000	Order of Honorable David L. Russell approving the final pre-trial report.
3/8/2000	Petitioners file Response in Opposition to Petitioners' Motion in Limine re: Relevancy of Parents' Testimony
3/8/2000	Petitioners file Response in Opposition to Petitioners' Motion in Limine re: Hearsay Evidence of Drug Use
3/9/2000	Order by Honorable David L Russell denying Respondents' Motion for Summary Judgment and granting Petitioners' Motion for Summary Judgment
3/9/2000	Entry of Judgment by Honorable David L. Russell in favor of Petitioners and against Respondents, terminating the case
3/21/2000	Respondents file Motion for Order to Add Plaintiff Lacey Earls, or in the alternative to Amend the Complaint, and to Amend the Judgment and Affidavits of David Earls and Lacey Earls in Support
11/24/2000	Order by Honorable David L. Russell granting Respondents' Motion for Order to add Plaintiff Lacey Earls, granting Respondents' Motion to Amend the Complaint, and to Amend the Judgment

DATE	PROCEEDINGS
3/24/2000	Entry of Amended Judgment by Honorable David L. Russell that judgment is entered in favor of Respondents and against Petitioners, Lindsay Earls, a minor, by her next friends and parents, John David and Lori Earls; Daniel James, a minor, by his next friend and mother, Leta Hagar; and Lacey Earls, a minor, by her next friends and parents, John David and Lori Earls.
4/10/2000	Respondents file Notice of Appeal
4/12/2000	Civil case docketed by 10th Circuit Court of Appeals and Preliminary Record Filed
4/19/2000	Respondents file Docketing Statement
8/1/2000	Respondents file Brief in Chief
8/8/2000	Amicus Curiae Brief in Support of Respondents filed by The American Public Health Association; The National Association of Social Workers; The National Association of Social Workers–Oklahoma Chapter; The Center for Law and Education; The National Center for Youth Law; The Juvenile Law Center; The Loyola Childlaw Center; Advocates for Children of New York; Lawyers for Children; Covenant House New Jersey; Professor Martin Guggenheim and Professor Randy Hertz
8/29/2000	Petitioners file Brief in Chief
9/6/2000	Amicus Curiae Brief in Support of Petitioners filed by Oklahoma State School Boards' Association and National School Boards' Association.

DATE	PROCEEDINGS
9/9/2000	Amicus Curiae Brief in Support of Petitioners filed by Washington Legal Foundation; Sen. Don Nickles; Sen. Judd Gregg; Gov. Frank Keating; Rep. Fred S. Morgan; Oklahoma Secondary Schools Activities Association; Allied Educational Foundation; Gayla D. Duke; Rhonda Ellard; Debra Fletcher; Bobbette Hamilton; Jimmy and Sheila Jordan; Michael and Kim Rawls; Stewart and Roshel Stabel; Kenneth A. Stanley; Kris Steele; Clyde L. and Gail A. Topping; Mike and Valerie Tucker; Steve and Lynne Young.
9/18/2000	Respondents file Reply Brief
1/24/2001	Case argued by Graham A. Boyd for Respondents and Linda M. Meoli for Petitioners and case submitted to Judges Brorby, Anderson and Ebel
1/25/2001	Motion filed by American Academy of Pediatrics for leave to become additional signatory to the pending brief of the amici curiae in support of the Respondents
1/31/2001	Order by Judges Brorby, Anderson and Ebel granting Motion of American Academy of Pediatrics to become amicus
3/5/2001	Respondents file supplemental authority
3/14/2001	Petitioners file response to Respondents' supplemental authority

DATE	PROCEEDINGS
3/21/2001	Order reversing and remanding of the Court of Appeals for the Tenth Circuit written, signed and published, authoring Judge Brorby, joined by Judge Anderson; Judge Ebel dissenting
4/4/2001	Petitioners file Petition for Rehearing and Suggestion for Rehearing En Banc
4/6/2001	Order for Respondents to file Response to Petition for Rehearing with Suggestion for Rehearing En Banc filed by Judges Brorby, Anderson and Murphy
4/30/2001	Respondents file Response to Petition for Rehearing and Suggestion for Rehearing En Banc
5/30/2001	Order Denying Rehearing and Suggestion for Rehearing En Banc filed by Judges Brorby, Anderson and Ebel. Judge Ebel voted to grant rehearing
6/7/2001	Mandate issued
8/24/2001	Petitioners file Petition for Writ of Certiorari in the United States Supreme Court
9/24/2001	Brief of Respondents in Opposition to Petition for Writ of Certiorari Filed
11/8/2001	Petition for Certiorari Granted
11/28/2001	Record Filed

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Case No. CIV-99-1213-R

LINDSAY EARLS, a minor, by her next friends and parents, John David and Lori Earls, and DANIEL JAMES, by his next friend and mother, Leta Hagar,

Plaintiffs,

v.

BOARD OF EDUCATION OF TECUMSEH PUBLIC SCHOOL DISTRICT, Independent School District No. 92 of Pottawatomie County, and TECUMSEH PUBLIC SCHOOL DISTRICT, Independent School District No. 92 of Pottawatomie County,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Filed August 18, 1999

(Violation of Fourth Amendment Civil Rights)

Plaintiffs Lindsay Earls and Daniel James, by their next friends and parents, on information and belief, hereby allege:

I.

INTRODUCTION

1. This suit seeks a declaration that students attending a public school have the right, protected by the Fourth and Fourteenth Amendments of the United States Constitution, to participate in non-athletic student activities without being required to submit to suspicionless drug testing. Plaintiffs in this action further seek appropriate injunctive relief protecting

them from the suspension or limitation of non-athletic student activities, and from any other punishment, due to their refusal to consent to, or pay for, any form of suspicionless drug testing. Under Oklahoma constitutional and statutory law, students have a right to a free, public education which is infringed upon by the actions of these defendants. Okla, Const. Art. 13, §1.

2. For years, the roughly 1,000 students at Tecumseh High School have had the benefit of participating in school-sponsored activities ranging from producing student newspapers and yearbooks to musical and academic endeavors such as choir and competitive quiz bowls. Most of the school's students participate in these activities, contributing not only to a diverse educational experience, but to a more well-balanced and responsible group of students. Student activities are critical to students' successful application to colleges and universities. Without a solid record of activities, even a student with excellent grades will be turned away from competitive universities. Until recently, Tecumseh High School's student activities were generally open to any students wishing to participate.

3. Beginning in October 1998, these requirements changed. With the implementation of the Student Activities Drug Testing Policy (hereinafter "Drug Testing Policy"), Tecumseh school officials now require all students who participate in certain enumerated activities to submit to suspicionless testing by urine sample for detection of illegal drugs, prescription drugs, and alcohol. Students must underwrite the cost of their own drug tests. As in many other schools, the Drug Testing Policy applies to athletic teams—a practice approved by the U.S. Supreme Court and not challenged here by plaintiffs. But Tecumseh school officials have gone the further step of drug testing participants in certain non-athletic student activities and students enrolled in academic classes linked to the student activities. For instance,

a student can take the choir class (a part of the school's regular curriculum) only if she also participates in the extra-curricular choir activities. Thus, the Drug Testing Policy effectively applies to parts of a public school's core, legally-required function—the education of its students. Any student who refuses to be tested for drugs and alcohol and to pay for such tests faces immediate termination from student activities and ejection from regular classes tied to those activities.

4. The School District has identified no special need to target students who do not participate in athletic activities for drug and alcohol testing. Rather, the policy expresses only a symbolic opposition to student drug and alcohol use. The testing methods used by the school is virtually useless in detecting past use of alcohol or most commonly abused drugs. By targeting a group of students who are relatively unlikely to use drugs on the basis of participation in activities that pose no special risks or physical dangers, the Drug Testing Policy neither addresses a proven problem nor promises to bring any benefit to students or the school. Instead, school officials have created a policy that causes substantial harms to its students. The policy discouraged from participation in student activities individuals who would otherwise benefit from experiences outside the strictly academic curriculum. Exclusion of students from these activities will seriously interfere with students' ability to gain college or university admission, affecting future employment, income, skills, and abilities. The harms caused by the policy will continue so long as defendants persist in implementing the current policy.

II.

PARTIES

5. Plaintiff Lindsay Earls is enrolled as a junior in Tecumseh High School, where she seeks to participate in non-athletic student activities subject to the school's Drug Testing Policy.

6. Plaintiff Daniel James is enrolled as a junior in Tecumseh High School, where he seeks to participate in non-athletic student activities subject to the school's Drug Testing Policy.

7. Defendant Board of Education of Tecumseh Public School District, Independent School District No. 92 of Pottawatomie County, is responsible for issuing, implementing, and enforcing the Student Activities Drug Testing Policy, which bars students from certain activities for which they are otherwise eligible unless they submit to testing of their urine for the presence of certain prohibited substances.

8. Defendant Tecumseh Public School District, Independent School District No. 92 of Pottawatomie County, is responsible for issuing, implementing, and enforcing the Student Activities Drug Testing Policy, which bars students from certain activities for which they are otherwise eligible unless they submit to testing of their urine for the presence of certain prohibited substances.

III.

JURISDICTION AND VENUE

9. This court has jurisdiction over all causes of action herein pursuant to 28 U.S.C. §§ 1331 and 1361. A cause of action for plaintiffs' claims is created by 42 U.S.C. § 1983.

10. Venue is proper in this court under 28 U.S.C. §1391(e).

IV.

FACTUAL BACKGROUND

A. *Non-athletic Student Activities Before Enactment of the Drug Testing Policy*

11. Tecumseh Public School District offers a host of student activities that complement the standard academic curriculum. Students are able to participate in activities

ranging from marching band to the French club, depending on their interests and abilities. Some of these activities contain a classroom component, which allows students to gain graded credit, including credits necessary in order to graduate.

12. Prior to October 1998, the requirements at Tecumseh High School for joining student activities depended on a student's academic performance, interest, and the specific nature of each individual activity. For athletic pursuits, such as football, the school required all participants to pass a certified physical exam in order to ensure that they met certain health requirements. Any additional requirements for participation depended on the selectivity and specific demands of the sport. For non-athletic activities, such as Academic Team and Choir, no physical or medical tests were required. Further, in contrast to athletic teams, non-athletic activities have never required communal undressing or other voluntary reductions in privacy.

B. *Events Leading to Enactment of the Student Activities Drug Testing Policy*

13. Tecumseh High School has been fortunate never to have experienced a period of suddenly increased drug or alcohol consumption. Drug use among high school students throughout the nation has steadily declined since 1996. Students who engage in school-sponsored activities are substantially less likely to use drugs than other students. Participants in band, orchestra, chorus, or the school play or musical exhibit the lowest drug or alcohol use of any group of students. No evidence suggests that Tecumseh diverges from these national trends. Indeed, the students who participate in non-athletic student activities at Tecumseh High School do not, as a group, have a reputation for or history of drug or alcohol use.

14. Two isolated events concerning athletes in Tecumseh's middle school triggered School District officials' decision to

"do something" about drugs. In 1996 or 1997 a group of eighth grade football players was accused of consuming prescription drugs, reportedly pills used to control blood pressure. Although these athletes were spared any injury, this incident gained notoriety among parents. The following year, a small quantity of marijuana was reportedly discovered in the middle school locker room and was said to belong to seventh grade football players.

15. Shortly after the incidents involving the middle school football players, several parents attended a school board meeting where they forcefully demanded a strong response to the threat of prescription drugs, illegal drugs, and alcohol. Directly responding to these parental demands, defendant School District proposed the Student Activities Drug Testing Policy.

A. *Provisions of the Drug Testing Policy*

16. Enacted in October 1998, the Drug Testing Policy created a mandatory, suspicionless drug and alcohol testing program with the stated purpose of "protect[ing] the health and safety of its extra-curricular activities students from illegal and/or performance-enhancing drug use and abuse, thereby setting an example for all other students of the Tecumseh Public School District."

17. Under the school's policy, each student participating in a covered activity must pay an annual fixed sum to subsidize the cost of his or her initial drug test and subsequent random drug testing. For the 1998-1999 academic year, the fixed sum was four dollars. For the 1999-2000 school year, the sum is five dollars. Students who refuse or are unable to pay the drug testing fee are ineligible to participate in student activities covered by the Drug Testing Policy or in the academic course associated with these activities.

18. The procedure for the Drug Testing Policy begins with a "Student Drug Testing Consent Form," which must be read,

signed and dated by the "activity student," his/her parent or custodial guardian, and the student's coach or sponsor. This form requires the activity student to agree to provide a urine sample "(a) as part of the student's annual physical or for eligibility for participation; (b) when the activity student is selected by the random selection basis to provide a urine sample; and (c) at any time when there is reasonable suspicion to test for illegal or performance-enhancing drugs." If a student has not returned the consent form with all of the requisite signatures and dates, he or she is prohibited from practicing or participating in any of the enumerated student activities.

19. The requirement of the Drug Testing Policy that each student pass an initial screening applies differently to athletic and non-athletic activities. For athletic team members, the Policy requires a urine test taken as part of the annual physical examination already required for such activities. For non-athletic activities such as Band or Academic Team, which have never required a physical examination or any other physical requirement, a urine test must be taken independently without a physical examination. The requirement of an initial urine test for all students was not enforced during the previous school year when the Policy first went into effect. Students have been told that all students participating in non-athletic activities subject to the Policy will be required to submit urine samples at the beginning of the 1999-2000 school year.

20. The second component of the Policy—random, suspicionless testing—takes place on a monthly basis. All students registered in either an "off-season" or "in-season" activity are placed on a list, and the Tecumseh Public School District determines the number of students to be chosen randomly from that list for testing in a given month.

21. Finally, the Student Activities Drug Testing Policy provides for testing of any activity student when an school administrator, coach, or sponsor has "reasonable suspicion of illegal or performance-enhancing drug use by that particular student." This element of the policy is not challenged here by Plaintiffs.

22. According to the Policy, urine tests should be conducted in "a restroom or other private facility behind a closed stall" and should be personally monitored by a school employee designated by the principal. The Policy provides that the monitor "shall not observe the student while the specimen is being produced, but . . . shall be present outside the stall to listen for the normal sounds of urination in order to guard against tampered specimens and to insure an accurate chain of custody."

23. The Drug Testing Policy sets forth the following protocol for analyzing students' urine and for responding to a positive test result. Students' urine is initially analyzed using the immunoassay methodology. A positive test result in the initial urine test is subject to confirmation by a second test of the same specimen using Gas Chromatograph/Mass Spectrometry ("GC/MS") methodology. If the GC/MS test reveals a positive result, the laboratory notifies the school principal or designee, who then notifies the student, the head coach or sponsor of the relevant activity, and the student's parent or guardian. The Policy allows notification of other school personnel who have an unspecified "need to know" but directs that the results are not to be given to law enforcement authorities. If the student wishes to challenge the results and request a review by the Superintendent, he or she is given five calendar days to submit a written appeal to the Superintendent, during which time the student may continue to participate in extra-curricular activities. The Superintendent or his/her designee makes the final determination of whether

the original finding was justified, and his or her decision is not subject to further review.

24. According to the Policy, the consequence of a positive test result depends on the number of prior offenses. For the first offense, the student's parent or guardian is contacted and a meeting is arranged to include the student, the parent/guardian, the athletic director or sponsor, and the principal. The student may continue to participate in the extra-curricular activity if, within five days of this meeting, (1) the student and parent/guardian show proof that the student has received drug counseling from a qualified entity, and (2) the student submits to a second drug test administered within two weeks of the meeting. For the second offence, the student is suspended from participation in all extra-curricular activities (including meetings, practices, scrimmages, and competitions) for fourteen calendar days and must successfully complete four hours of substance abuse counseling. Thereafter, the student must submit to monthly tests at times and dates chosen at random by the principal or designee. After a third offense, the student is suspended completely from participating in any extra-curricular activity "for the remainder of the school year, or eighty-eight school days (1 semester), whichever is the longer."

D. *The Application of the Drug Testing Policy to Plaintiffs*

25. Plaintiff Lindsay Earls has previously participated in the school's Academic Team, Choir, Show Choir, Marching Band, Beta Club and National Honor Society. Ms. Earls desires to continue participating in these activities and to enroll in academic classes connected with Academic Team, Choir, Show Choir, Marching Band during the 1999-2000 school year. She will be permitted to continue as a member of the Beta Club and National Honor Society, but she will be ineligible to engage in her other student activities and will be expelled from the connected curricular classes under the

school's Drug Testing Policy unless she submits to the school's program of suspicionless drug testing. Ms. Earls plans to use her choir and band class credits to meet the school's graduation requirement that she complete a fine arts class. She does not wish to pursue non-musical or non-performance classes to meet this requirement. Indeed, she is considering music as a college major and plans to apply for music scholarships. Defendants' Policy would exclude Ms. Earls from her chosen activities and classes and would effectively foreclose her ability to major in music or receive music scholarships solely because she objects to providing her urine on demand to school officials for drug testing. She has met every other criteria for participation in her chosen activities and for enrollment in her chosen classes. Ms. Earls aspires to attend a competitive university after she graduates from high school and wishes to increase her academic skills and musical talents. She fears, however, that exclusion from student activities and classes will jeopardize her future plans and aspirations.

26. During the 1998-99 school year, Ms. Earls was coerced into consenting to the school's drug testing program, and she did so only in order to avoid being barred from student activities and associated classes. In October 1998, she completed a consent form, including a list of her prescription drugs, and submitted the form to Mrs. Warwick, the Academic Team advisor. Ms. Earls does not know whether the form was placed in a sealed envelope, as called for by the Policy. An initial drug screening was not required for participation on the Academic Team for the 1998-1999 school year, since the Drug Testing Policy took effect mid-year.

27. Plaintiff Earls was selected for random drug testing in early 1999. She learned of her selection while attending choir class, which meets in the middle school auditorium. A principal's assistant arrived at the choir class and announced

for all to hear that Ms. Earls needed to report to the school cafeteria. The other students in the class immediately understood that Ms. Earls had been selected for drug testing. One of the students who had previously been drug tested offered to give Ms. Earls a ride back to the high school and to lend "moral support" while Ms. Earls waited for the drug test. In the school cafeteria, the principal explained to the group of approximately fifteen students the procedure to be followed. Each student was given a small cup. Faculty members led the students to the bathroom in groups of three or four. When the time arrived for Ms. Earls to walk to the bathroom, she felt that the entire program was a futile and somewhat humorous waste of time and money. But when she had to produce a urine sample, her sense of amusement turned into embarrassment. She entered a bathroom stall, while three faculty members waited immediately outside the stall listening for the sound of Ms. Earls' urination. One of the faculty members, a sponsor for the cheerleading squad, joked that she felt like she was engaging in "potty training." Another monitor, the sponsor for the softball team, collected Ms. Earls cup, sealed it, and supervised Ms. Earls as she signed her initials on the cup label. Ms. Earls heard nothing further from school officials concerning the results of her drug test, thus indicating that she had "passed" the test.

28. Plaintiff Daniel James seeks to participate in the school's Academic Team, Life Guides and Youth Alive during the 1999-2000 school year. He will be permitted to serve as a Life Guide (a group of role models and peer counselors which requires a pledge of drug and alcohol abstinence but does not require a urine test) and to participate in Youth Alive activities, but he will be ineligible to join the Academic Team and will be barred from the connected curricular class under the school's Drug Testing Policy unless he submits to the school's program of suspicionless drug testing. During the 1998-99 academic year, Mr. James was

not required to consent to drug testing in order to participate in the Life Sports Class, where he joined members of the school's Power Lifting Team in weight-lifting exercises. He excelled at the sport and competed successfully as an individual in tournaments.

29. Mr. James objects to suspicionless drug testing because he believes it interferes with his rights and his privacy. In particular, he fears that an erroneous test result, purporting to show drug or alcohol use, will result in profoundly negative consequences. He believes he would be excluded from Life Guides, would lose his hard-earned reputation as a student leader, and would forfeit any ability to guide his fellow students. His training as a Life Guide included a week-long course and intensive work with professional counselors—all of which would be meaningless if he was perceived to be a drug user. Mr. James believes that his participation in the Academic Team and Life Guides are both of great importance to his ability to gain admission to a competitive university.

B. *The Effects of the Drug Testing Policy*

30. Most, if not all, of the non-athletic activities subject to drug testing are not "extra-curricular" in the normal sense of that word, since each of these activities also includes a classroom component. Students who participate in the Academic Team, Choir, Band, Future Farmers of America (FFA), and Future Homemakers of America (FHA) (and perhaps members of the cheerleading and pom pon squads) must also enroll in a regular class corresponding to each of these activities. Students receive graded credits for these classes only if they participate in the related student activity. Some of these classes are used by students to fulfill the course distribution prerequisites for graduation. For instance, the school requires students to earn fine arts credits in order to receive a diploma. This prerequisite can be met only

through courses associated with a non-athletic student activity, such as choir or band, or through a class devoid of musical performance (for instance, ceramics or music appreciation class). Thus, a student who refuses to submit to random drug testing is excluded from the entire fine arts performance curriculum, forced instead to take a class that teaches only visual arts or music theory.

31. The purpose of defendants' policy is more symbolic than practical. Defendants enacted the Drug Testing Policy, not upon evidence it would have any appreciable effect in reducing use of prohibited substances and not in response to a documented drug problem, but rather because defendants perceived a need to send a message to students and parents that defendants do not condone drug use. Defendants have no reason to believe that students engaged in non-athletic activities are particularly likely to use drugs—indeed, these students are among the least likely to use drugs. Instead of formulating a policy to meet the particularized needs of a proven problem, defendants reacted to the vocal urgings of a small number of parents who believed the school district should to take stronger steps to penalize drug and alcohol use.

32. Defendants arrived at their choice of random drug testing without reaching a considered conclusion that other, less intrusive programs could achieve their stated goals. Although many school districts have found that a drug testing program based on individualized suspicion is adequate to detect and prevent drug use, defendants did not consider such an option or conclude that such an option would be unworkable. Further, defendants had no basis for rejecting the conclusion of many other school districts that random drug testing, if conducted at all, should be limited to athletes, for whom there is a lower expectation of privacy and for whom drug or alcohol use poses special dangers while engaged in strenuous physical activities.

33. The Drug Testing Policy purports to apply to every student in grades 7-12 who "represents Tecumseh schools in any extra-curricular activity such as FFA, FHA, Academic Team, Band, Vocal, Pom Pon, Cheerleader and Athletics." In fact, the Policy applies only to the athletic teams and to the following non-athletic activities enumerated in the Policy, none of which involve communal undressing, other voluntary reductions in student privacy, or risk of physical injury to students:

a. *Academic Team*: The Academic Team consists of a group of students who enroll in a regular academic class and then compete in interscholastic contests. These contests take the form of "quiz bowls" or question-answer sessions on a variety of topics. Students participate in a daily classroom session where they create a notebook project, research and write reports, and undertake other activities designed to broaden the students' knowledge base. Students receive graded credits for their classroom activities. Students also meet once a week after school for practice and compete one to two times per week in tournaments for most of the academic year. In addition to competing at other high schools, the group hosts an annual tournament held at Tecumseh High School.

b. *Band*: Tecumseh High School sponsors both a marching band (which includes a musical section and a color guard) and a concert band. The marching band regularly performs, both on and off campus, at sporting events and competitions. To be eligible to march in the band, students must enroll in the marching band's classroom component, which counts toward a student's graduation requirements; students who do not march in the band are not eligible for the class. The concert band, unlike the marching band, focuses solely on musical performance. Students in the concert band are required

to take a graded classroom component which counts toward their graduation requirements.

c. *Choir*: The school choir performs regular concerts and participates in interscholastic competitions. Apart from the drug testing requirement, it is open to all students who are interested. Those students who choose to participate must be enrolled in a classroom component which counts toward the fine arts distributional requirement, and students who do not perform with the choir are not eligible for the class. Some of the students in the choir also participate in a group known as the Show Choir. More selective than the Choir, the Show Choir requires participants to audition for performance roles, with selection based on their talent and dedication. Subject to the same participatory requirements as the choir, all students in the Show Choir must undergo drug testing and must satisfy the classroom component. The group practices regularly during and after school, and it typically performs in three annual shows, where students sing selections from Broadway musicals. Newspaper announcements and bulletins invite members of the public to the shows, some of which are held in the auditorium of the Tecumseh Middle School.

d. *Future Homemakers of America (FHA)*: Future Homemakers of America is a national club teaching homemaking skills. Participants in the Tecumseh High School's chapter meet regularly during school hours.

e. *Future Farmers of America (FFA)*: Future Farmers of America, a national organization with chapters in many communities, consists of students with an interest in a farming career. Students must enroll in an FFA class in order to be a member of the organization. Participants have the option of entering farming or livestock shows and competitions. All student participants are subject to

the Drug Testing Policy, even when they choose not to enter off-campus shows and instead take only the classroom component of FFA.

f. *Cheerleaders and Pom Pon*: Members of the cheerleading and pom pon squads perform at school athletic events.

34. The choice of activities subject to drug testing has no rational basis. The drug-tested activities have no common factor that is not also shared by other activities not subject to drug testing. These other activities include travel off-campus, representation of the school at interscholastic competitions, activities linked to curricular classes, activities that meet during regular school hours, and activities that meet after school. The Drug Testing Policy does not, for instance, apply to a number of non-athletic student activities, including the following:

a. *Life Guides*: Life Guides are a group of selected students who act as role models for children in the Tecumseh community and serve as peer counselors for students in Tecumseh public schools. They provide a watchful eye and positive encouragement to other students. Although not subject to the Drug Testing Policy, its participants must make a formal pledge to refrain from using drugs and alcohol. The group meets regularly on and off campus, both during and after school hours. As representatives of Tecumseh High School, their activities include: counseling middle school students about drug use, violence, and other issues and performing public skits and role-playing exercises emphasizing positive youth behavior.

b. *School Newspaper*: The school newspaper, "THS Legacy," is written and produced by a group of student reporters and editors. Students who participate must be enrolled in a classroom component, which includes

instruction in journalism and counts toward graduation requirements. Newspaper staff members work during and after school hours, and they sometimes leave the campus in order to report for the paper. Besides publishing the newspaper, the student participants represent the school in interscholastic newspaper competitions.

c. *Yearbook*: Student production of the school's yearbook includes a classroom component with graded credits toward graduation. Students devote some after-school hours to yearbook projects, but most work takes place during school hours. Participants often represent the school at workshops and fund-raising activities.

d. *School Play*: Tecumseh High School produces an annual school play, with auditions open to all students, but since the play is traditionally a musical, casting decisions turn on students' musical abilities. Joining the play does not involve a classroom component, students receive no credits, and rehearsals take place in the afternoons, evenings and on weekends. Apart from the absence of a classroom component, the school musical is indistinguishable from choir activities. As with the Show Choir, students represent the school in a series of performances in the Middle School auditorium to which the public is invited.

e. *Leadership*: Leadership is a service-oriented activity which contains a graded classroom component counting toward a student's graduation requirement. Participants complete some of the work on campus during regular school hours, but spend most of their time representing the school in the community both during and after school hours. Past activities include collecting toys for underprivileged children at Christmas, soliciting contributions for tornado victims, and reading to children at local elementary schools. Participants in

Leadership receive awards for devoting significant amounts of time toward these off-campus activities.

f. *Student Government*: Student government consists of student representatives elected by their classmates. The group meets during regular school hours. The activity requires students to leave campus for fund-raising and other functions.

g. *Beta Club*: The Beta Club is a service-oriented activity which selects participants based on their academic performance. Students meet regularly during school hours and sponsor a variety of service initiatives in the community. Some activities, such a canned food drive and a blood drive, take place at the Tecumseh High School campus. Participants also represent the school during overnight trips to a statewide Beta convention held in Oklahoma City and to a national convention held outside Oklahoma.

h. *Students Against Drunk Driving (SADD)*: Students Against Drunk Driving is a national organization with the purpose of discouraging students from driving under the influence of alcohol. Tecumseh High School's chapter meets regularly during school hours.

i. *French Club*: The French Club requires students to have taken at least one class in French in order to participate. Students who participate meet on campus during school hours. At least once per year, the group attends an off-campus cultural events such as a play or movie.

j. *Spanish Club*: Like the French Club, the Spanish Club requires students to have taken at least one class in Spanish in order to participate. Students meet on campus during school hours. At least once per year, the group attends an off-campus cultural event such as a play or movie.

k. *National Honor Society*: The National Honor Society selects high-achieving students based on their high school grade point average. The chapter at Tecumseh High School holds an annual induction ceremony for new members and meets once a year to elect the chapter's officers.

l. *Math Club*: The Math Club was not active during the 1998-99 school year, but in previous years it met during regular school hours. In addition, the Club sponsored trips to Six Flags amusement park and to a Colorado ski resort. Students also represented the Club at Oklahoma University football games.

m. *Fellowship of Christian Athletes (FCA)*: FCA, a group of Christian student athletes, meets weekly after school hours. Meetings include inspirational speakers and fellowship.

n. *Youth Alive*: Youth Alive meets during school hours for weekly prayer meetings.

o. *Eco Club*: Eco Club, a student environmental organization, meets regularly during school hours and sponsors several projects dedicated to environmental protection, such as Earth Week and flower-planting.

35. In addition to formalized student activities, students represent the school in a variety of field trips associated with academic classes. For instance, Plaintiff Earls joined her sociology class in a visit to a state prison in Lexington, Oklahoma. On May 11, 1999, the students toured the prison and talked with a warden and several inmates. The prisoners and prison officials were informed that the students were enrolled at Tecumseh High School. Ms. Earls' parents signed a permission slip stating the time, place and sponsors of the field trip, but Ms. Earls and her parents were not required to consent to her being drug tested as a condition of joining in the prison visit.

E. *Unreliability of Defendants' Drug-Testing Methodology.*

36. Immunoassay urine tests are subject to several sources of error. The most common disadvantage associated with the test is the production of "false positives" (incorrectly detecting the presence of chemical metabolites, or residues, where none are present). This can occur due to the nature of the technology, which relies on the detection of color changes in the urine after reaction to drug metabolites. When chemicals permitted by the school district create color changes similar to the change created by metabolites of prohibited substances, some individuals tested may be incorrectly identified as drug users. Examples of such chemicals are ibuprofen, which can react as a false positive for marijuana, and the metabolites of poppy seeds, which can react as a false positive for narcotics.

37. The immunoassay urine test is also capable of producing "false negatives," failing to identify with positive results those students who have actually used the prohibited substances. This can occur when chemical masking agents are used to minimize the chance of detection or when timing of the test prohibits detection. The urine test is only effective as long as the substances it is attempting to detect have been metabolized and the metabolites have reached and remain in the urine. They cannot be detected after the metabolites have all been excreted from the body. Because alcohol and its metabolites pass quickly through the human body, the test will detect alcohol use only if performed within less than 24 hours after consumption. The window of detection for cocaine, heroin and methamphetamines are only slightly longer. Of the drugs typically used by high school students, a random drug test is likely to detect only marijuana or tobacco—and the school's Policy does not call for testing of tobacco. The test for detection of performance enhancing drugs like steroids costs approximately $200, making it unfeasible for most schools to test for these substances.

38. If properly used, GC/MS methodology helps minimize the likelihood of false positives, since it is better able to distinguish between a prohibited substance and a substance that is chemically similar to the prohibited substance. However, not all laboratories equipped with GC/MC equipment are qualified to use this technology to detect drug or alcohol metabolites. The Policy does not requires that the laboratory employed by defendant is certified by the federal government, the Oklahoma State Department of Health, or any other authority for use of GC/MS technology in drug or alcohol testing. The Policy does not set appropriate protocols for sample collection, documentation, and preservation of chain of custody—all of which are necessary for accurate test results. Moreover, since GC/MS methodology is used only after a positive immunoassay test, it will not affect the rate of false negatives, i.e., the testing program will be incapable of detecting a significant range of uses of prohibited substances.

V.

CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION

39. Plaintiffs reallege and incorporate by reference ¶¶ 1 through 38 as if set forth fully herein.

40. The Fourth Amendment to the U.S. Constitution provides in relevant part: "The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

41. Defendants' enactment and implementation of the portion of the Student Activities Drug Testing Policy requiring suspicionless testing of students engaged in non-athletic activities violates the Fourth Amendment, as incorporated and made applicable to Defendants by the Fourteenth Amendment, facially and as applied to plaintiffs.

VI.

IRREPARABLE HARM

42. Plaintiffs have suffered and will continue to suffer irreparable harm due to their exclusion from academic classes and student activities unless they submit to suspicionless drug testing. Class credits are necessary for graduation, and associated student activities play a vital role in college admissions, social involvement, and skills development.

43. Plaintiffs have a constitutional right to be free of suspicionless testing of their urine for the presence of prohibited substances. The denial of plaintiffs' constitutional rights constitutes per se irreparable harm.

VII.

PRAYER FOR RELIEF

WHEREFORE,

Plaintiffs accordingly pray for the following relief:

A. A preliminary and permanent injunction enjoining defendants, their agents, employees, assigns, and all persons acting in concert or participating with them from (1) enforcing the provisions of the Student Activities Drug Testing Policy requiring suspicionless testing of students engaged in non-athletic activities, or (2) taking any other measure to subject plaintiffs or other students seeking to participate in non-athletic student activities to tests for detection of prohibited substances except upon individualized, reasonable suspicion that a particular student has consumed a prohibited substance.

B. A declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that the provisions of the Student Activities Drug Testing Policy requiring suspicionless testing of students engaged in non-athletic activities violates plaintiffs' rights under the Fourth and Fourteenth Amendments to the United States Constitution facially and as applied to plaintiffs.

C. Allow Plaintiff's their reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988; and

D. Such other and further relief as this court may deem necessary and proper.

Dated: August 18, 1999

Respectfully submitted,

GRAHAM A. BOYD
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Drug Policy Litigation Project

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ANSWER OF DEFENDANTS
Filed August 24, 1999
[Caption Omitted in Printing]

COME NOW the purported Defendant, Board of Education of Tecumseh Public School District, Independent School District No. 92 of Pottawatomie County and the Defendant, Independent School District No. 92 of Pottawatomie County, Oklahoma (designated in the style as "Tecumseh Public School District, Independent School District No. 92 of Pottawatomie County"), and for answer to the Complaint of the Plaintiffs herein allege and state as follows:

1. The Defendants deny, generally and specifically, each allegation of the Plaintiffs except those which are hereinafter specifically admitted.

2. With respect to Paragraph No. 1, Defendants admit that Plaintiffs are seeking declaratory relief, as stated. Defendants deny Plaintiffs are entitled to the declaration they seek. Defendants further admit Plaintiffs are seeking injunctive relief, but deny they are entitled to such relief. Defendants specifically deny that any form of punishment whatsoever is involved in this action. Defendants admit children in the State of Oklahoma under the age of 21 years old are entitled to a free, public education within the State of Oklahoma, but specifically deny that their right to a free, public education is in any way infringed by Defendants' drug-testing policy. Defendants specifically deny that Plaintiff Daniel James is entitled to an education at Defendant Independent School District No. 92 of Pottawatomie County, Oklahoma, since he is not a resident of the district.

3. With respect to Paragraph No. 2, it is admitted that students at Tecumseh High School have, for many years, been offered the opportunity to participate in school-sponsored extra-curricular and co-curricular endeavors. It is denied that there are "roughly 1,000 students at Tecumseh

High School." It is admitted that a majority of Tecumseh High School students participate in at least one extra-curricular club or activity. It is further admitted that Defendants believe students benefit from participating in these voluntary extra-curricular clubs and activities. It is further admitted that extra-curricular clubs and activities have been and are currently open to any students who meet the requirements to participate in the activity. The remaining allegations of Plaintiffs' Paragraph No. 2 are denied.

4. With respect to Paragraph No. 3 of Plaintiffs' Complaint, it is admitted that in October, 1998, Defendants' implemented a student activities drug-testing policy. That policy does require students who participate in certain enumerated extra-curricular activities to submit to drug testing as set forth in the policy. It is further admitted that students are asked to pay an annual $5.00 fee to help defray the costs of this drug testing. It is further admitted that the policy applies to extra-curricular athletic activities as well as enumerated competitive non-athletic student extra-curricular activities. It is specifically denied that the drug-testing policy applies with respect to any academic, non-extra-curricular, classes or activities. It is specifically denied that a student may only take the academic choir class only if she participates in the extra-curricular choir activities. It is admitted that any student who refuses to participate in the drug-testing policy will not be allowed to participate in the voluntary, extra-curricular activities enumerated. It is specifically denied that students who are unable to pay the $5.00 fee will be denied the opportunity to participate in the voluntary extra-curricular activities. It is specifically denied that students will be ejected from any regular classes if the student refuses to agree to the drug-testing policy for extra-curricular activities. The remaining allegations of Plaintiffs' Complaint, Paragraph No. 3 are denied.

5. The allegations of Plaintiffs' Complaint, Paragraph No. 4 are denied.

6. The allegations of Plaintiffs' Complaint, Paragraph Nos. 5 through 10, inclusive, are admitted.

7. With respect to Plaintiffs' Complaint, Paragraph No. 11, it is admitted that Tecumseh Public School District offers student activities that complement the standard academic curriculum. Students are able to participate in activities, including marching band and the French Club, depending upon their interest and abilities. It is denied that some of these activities contain a classroom component. The classroom component is entirely separate and apart from the extra-curricular activity. However, it is admitted that certain extra-curricular activities are only open to participation to students who are enrolled in, or have previously taken, certain academic courses. Those academic courses may have been either required or included within the credits necessary in order to graduate.

8. With respect to Plaintiffs' Complaint, Paragraph No. 12, it is admitted that the requirements at Tecumseh High School for participating in student extra-curricular activities depend on the activity involved and the requirements therefore. It is further admitted that participants in athletics are and have been required to meet certain health requirements and pass a physical exam. It is further admitted that no physical or medical exam was required for participation in non-athletic extra-curricular activities, such as academic team and choir competition. The remaining allegations of Paragraph No. 12 are denied.

9. The allegations of Plaintiffs' Complaint, Paragraph No. 13 are denied. Defendants further state that even if is shown that Tecumseh High School students do not diverge from national trends on drug usage, any drug usage among its students is unacceptable and contrary to the best interests and safety of the students.

10. With respect to Plaintiffs' Complaint, Paragraph Nos. 14 and 15, Defendants admit that the two events generally referred to did occur, and caused concern among the constituents of the District, as well as the Defendants. However, it is denied that these instances were the sole motivation for enactment of the student activities drug-testing policy.

11. With respect to Plaintiffs' Complaint, Paragraph No. 16, it is admitted that the quoted language is contained within the drug-testing policy.

12. With respect to Plaintiffs' Complaint, Paragraph No. 17, it is admitted that each student participating in a covered extra-curricular activity is asked to pay an annual fixed sum to partially cover the costs of his or her initial drug test and subsequent random drug testing. It is further admitted that for the 1998-1999 academic year the sum was $4.00, and for the 1999-2000 the sum is $5.00. It is specifically denied that students who are unable to pay the $5.00 testing fee are ineligible to participate in student extra-curricular activities covered by the drug-testing policy. It is specifically denied that students who refuse to participate in the drug-testing policy are ineligible to enroll in and take academic courses associated with any extra-curricular activity. It is admitted that students who refuse to comply with the drug-testing policy are not eligible to participate in the enumerated extra-curricular activities.

13. The allegations of Plaintiffs' Complaint, Paragraph No. 18, are admitted.

14. With respect to Plaintiffs' Complaint, Paragraph No. 19, it is denied that the initial screening applies differently to athletic and non-athletic activities. It is admitted that there has never been a requirement for physical examination for band or academic team. It is further admitted that an initial urine test was not required for students during the year when

the policy first went into effect, since the policy went into effect after the student activities had already begun. It is admitted that students have been told that all students participating in extra-curricular activities subject to the policy will be required to submit urine samples at the beginning of the 1999-2000 school year.

15. The allegations of Plaintiffs' Complaint, Paragraph Nos. 20 through 24, are admitted.

16. With respect to Plaintiffs' Complaint, Paragraph No. 25, it is admitted that Plaintiff Lindsay Earls has previously participated in the school's academic team, choir, show choir, marching band, Beta Club, and National Honor Society. Upon information and belief, it is admitted Ms. Earls' desires to continue participating in these activities and she has enrolled in academics class, choir, and band during the 1999-2000 school year. It is admitted that even if she does not participate in the drug-testing policy, she will be permitted to continue as a member of the Beta Club and National Honor Society. It is further admitted that if she refuses to participate in the drug-testing policy, she will not be allowed to participate in the extra-curricular activities of academic team competition, choir competition, and band competition during the 1999-2000 school year. It is specifically denied that Plaintiff Lindsay Earls will be expelled from any curricular classes under the school's drug-testing policy. These Defendants do not know what "Ms. Earls' plans" with respect to choir and band class credits may be, and therefore those allegations are deemed denied. It is admitted that choir and band may be used to meet the school's graduation requirements of fine arts classes. It is denied that Ms. Earls needs to meet further requirements to meet the fine arts graduation requirement, because she has already met that requirement. These Defendants are without sufficient information to form a belief as to the accuracy of Plaintiff Lindsay Earls' considerations and "fears" for a college major, plans to apply for

scholarships, and future plans and aspirations and therefore those allegations are deemed denied. It is specifically denied that Plaintiff's failure or refusal to comply with the drug-testing policy would foreclose Ms. Earls from any curricular classes. It is denied that Defendants' drug-testing policy would, in any manner, foreclose Plaintiff Lindsay Earls' ability to major in music in college or receive music scholarships. It is admitted that she has met the requirements for enrollment in her chosen classes, and has met the requirements to participate in the extra-curricular activities associated with band and choir, including consenting to the drug testing policy. It is specifically denied that Plaintiff Lindsay Earls would have been barred from any "associated classes" if she had refused to consent to the school's drug-testing program.

17. With respect to Plaintiffs' Complaint, Paragraph No. 26, it is specifically denied Plaintiff Lindsay Earls has been coerced in any manner. These Defendants are not able to discern Plaintiff Lindsay Earls' thought processes, and therefore, these Defendants do not know what motivated Ms. Earls to consent to the drug-testing policy in the 1998-1999 school year. Neither Ms. Earls, nor her parents, at any time voiced any complaint or wrote any caveat or exception to their consents. The remaining allegations of Plaintiffs' Complaint, Paragraph No. 26, are admitted.

18. With respect to Plaintiffs' Complaint, Paragraph No. 27, it is admitted that Lindsay Earls was randomly selected for drug testing in January of 1999. It is further admitted that the drug test did not indicate any drug usage. At this time, Defendants are without sufficient information to form a belief as to the accuracy of the remaining allegations of Plaintiffs' Complaint, Paragraph No. 27, and therefore they are deemed denied.

19. With respect to Plaintiffs' Complaint, Paragraph No. 28, it is admitted that Plaintiff Daniel James is enrolled in

academics class, and that he may seek to participate in Academic Team. It is denied that he is currently eligible to participate in the competitive Academic Team based upon his grades. It is further admitted that Plaintiff Daniel James participates in Life Guides and Youth Alive; however, it is specifically denied that Life Guides and Youth Alive are extra-curricular activities sponsored by the Defendants. It is admitted that Life Guides and Youth Alive are allowed the opportunity to meet at the school, during non-instructional time. It is admitted that Plaintiff Daniel James may serve as a Life Guide and may participate in Youth Alive activities; however, it is denied that these Defendants sponsor, regulate, or control participation requirements for those activities, since they are not school-sponsored extra-curricular activities. It is further specifically denied that Plaintiff Daniel James will be barred from taking any curricular class under the drug-testing policy unless he agrees to submit to the school's program of drug testing. It is further admitted that during the 1998-1999 academic year, Plaintiff Daniel James was not required to consent to drug testing in order to participate in the curricular gym Life Sports Class, since there is no requirement for any student to consent to the drug-testing policy to participate in any curricular class. It is admitted that during Life Sports Class he participated in classroom instruction in weight-lifting exercises. These Defendants are without information to form a belief as to the accuracy as to whether or not Mr. James "excelled" at power lifting and whether or not he competed successfully as an individual in tournaments, and therefore denies same.

20. These Defendants are not able to discern Plaintiff Daniel James' thought processes and therefore these Defendants do not have sufficient information to form a belief as to the accuracy of Plaintiffs' Complaint, Paragraph No. 29, and therefore the allegations are deemed denied.

21. With respect to Plaintiffs' Complaint, Paragraph No. 30, it is denied that the non-athletic activities subject to drug testing are "not 'extra-curricular' in the normal sense of that word." It is denied that any activities include a classroom component. It is admitted that in order to participate in certain extra-curricular activities, there is a requirement that a student either currently be enrolled in, or have previously taken, certain classes. It is admitted that students who participate in the Academic Team must be enrolled in Academics class. It is admitted that students who participate in extra-curricular choir activities must be enrolled in choir. It is admitted that students who participate in extra-curricular band activities must be enrolled in band class. It is admitted that students who participate in Future Farmers of America (FFA) extra-curricular activities must be currently enrolled in agricultural classes. It is admitted that students who participate in Future Homemakers of America (FHA) must currently be enrolled in or have previously been enrolled in a family and consumer science class. It is specifically denied that students only receive graded credits for the curricular classes if they participate in the related student extra-curricular activities. It is admitted that students at Tecumseh High School are required to earn one fine arts credit in order to graduate. It is specifically denied that a student who refuses to submit to random drug testing is excluded from any of the fine arts performance curricular classes.

22. The allegations of Plaintiffs' Complaint, Paragraph Nos. 31 and 32, are denied.

23. With respect to Plaintiffs' Complaint, Paragraph No. 33, it is admitted that the policy applies to every student in grades 7 through 12 who represents Tecumseh Schools in competition with respect to FFA, FHA, academic team, band, vocal, pom-pon, cheerleader, and athletics. It is denied that

those groups do not involve voluntary reductions in student privacy, and risk of physical injury or drug abuse by students.

24. The allegations of Plaintiff's Complaint, Paragraph No. 33(a), are admitted.

The allegations of Plaintiff's Complaint, Paragraph No. 33(b), are admitted, except that it is specifically denied that students who do not march in the band in competitive extra-curricular activities are not eligible for the band class, and it is also denied that students who do not participate in the extra-curricular concert band competitions are unable to enroll in the band class.

25. With respect to Plaintiff's Complaint, Paragraph No. 33(c), it is specifically denied that students must participate in the extra-curricular choir competitions if they are enrolled in choir class. The remaining allegations of Paragraph No. 33(c), are admitted.

26. The allegations of Plaintiff's Complaint, Paragraph No. 33(d), are admitted.

27. The allegations of Plaintiff's Complaint, Paragraph No. 33(e), are admitted, except that it is specifically denied that students who choose not to enter off-campus extra-curricular shows, and instead take only the classroom agricultural-related classes, are required to participate in the drug-testing policy.

28. The allegations of Plaintiff's Complaint, Paragraph No. 33(f), are admitted.

29. With respect to Plaintiff's Complaint, Paragraph No. 34, it is specifically denied that the choice of activities subject to drug-testing has no rational basis and that the activities do not share a common factor that is not shared by other activities which are not subject to drug testing.

30. With respect to Plaintiff's Complaint, Paragraph No. 34(a), since Life Guides is not a school-sponsored extra-curricular activity, these Defendants are without sufficient information to form a belief as to the accuracy of the allegations concerning the requirements for participation and their activities and therefore the allegations are deemed denied. It is admitted that the group is allowed to meet on campus. It is denied that the group is allowed to meet during classroom instructional hours.

31. The allegations of Plaintiff's Complaint, Paragraph Nos. 34(b) and 34(c), are admitted.

32. With respect to Plaintiff's Complaint, Paragraph No. 34(d), it is admitted that Tecumseh High School produces an annual school play, with auditions open to all students, and that the play is frequently a musical play and casting considerations include students' musical abilities. It is admitted that participation in the play does not involve a classroom component, and the students receive no credits for participation in the play and that rehearsals take place outside of regular school hours. It is denied that the school play is indistinguishable from choir activities. It is admitted that students perform the play in the auditorium, and the public is invited.

33. With respect to Plaintiff's Complaint, Paragraph No. 34(e), it is denied that Leadership is an extra-curricular activity. The remaining allegations of Paragraph No. 34(e) are admitted.

34. With respect to Plaintiff's Complaint, Paragraph No. 34(f), it is denied that student government activities require students to leave campus for any reason. The remaining allegations of Paragraph No. 34(f) are admitted.

35. The allegations contained in Plaintiff's Complaint, Paragraph No. 34(g), are admitted.

36. With respect to Plaintiff's Complaint, Paragraph No. 34(h), it is denied that Students Against Drunk Driving (SADD) meets regularly during school hours. The remaining allegations of 34(h) are admitted.

37. The allegations of Plaintiff's Complaint, Paragraph Nos. 34(i) through 34(m), are admitted.

38. The allegations of Plaintiff's Complaint, Paragraph No. 34(n), are denied.

39. The allegations of Plaintiff's Complaint, Paragraph No. 34(o), are admitted.

40. The allegations of Plaintiff's Complaint, Paragraph No. 35, are admitted.

41. With respect to the allegations of Plaintiff's Complaint, Paragraph Nos. 36 through 38, these Defendants are without specific information to admit the particular statements made by Plaintiffs, and therefore they are deemed denied. It is admitted that the immunoassay urine tests are not sufficiently reliable, in and of themselves, to form a definitive belief that students have taken illegal drugs. It is for that reason that the gc/ms methodology is used in the event the immunoassay test indicates and detects presence of chemical metabolites. It is further for that reason that Defendants utilize a drug-testing laboratory that has expertise and proper credentials and is used by other school districts throughout the State of Oklahoma for drug testing.

42. With respect to Plaintiff's Complaint, Paragraph No. 39, these Defendants re-allege and incorporate by reference their specific answers and responses to Plaintiffs' Complaint, Paragraph Nos. 1 through 38, of as if fully set forth herein for response.

43. The allegations of Plaintiff's Complaint, Paragraph No. 40, are admitted.

44. The allegations of Plaintiff's Complaint, Paragraphs No. 41, 42 and 43, are denied.

AFFIRMATIVE DEFENSES

For further, affirmative defense, Defendants, and each of them allege and state as follows:

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

2. The purported Defendant, Board of Education of Tecumseh Public School District, Independent School District No. 92 of Pottawatomie County, lacks capacity to be sued.

3. Plaintiff Daniel James lacks standing to maintain this action.

4. Plaintiff Lindsay Earls has affirmatively and specifically waived any objections to the drug-testing policy herein.

5. Defendants' drug-testing policy, is a rationale, appropriate and considered response to the perceived and actual drug problem among students.

WHEREFORE, having fully answered, the Defendants, Board of Education of Independent School District No. 92 of Pottawatomie County, Oklahoma and Independent School District No. 92 of Pottawatomie County, Oklahoma, pray that the Plaintiffs take nothing by their Complaint herein, and that judgment be rendered for the Defendants and against the Plaintiffs, and that these Defendants be discharged, together with their costs and attorney fees incurred.

Respectfully submitted,

THE CENTER FOR EDUCATION LAW, INC.

By: /s/ Linda Maria Meoli
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[Certificate of Service Omitted in Printing]

DEFENDANTS' RESPONSES TO PLAINTIFFS' INTERROGATORIES, FIRST SET

Mailed to Plaintiff's Attorney on December 17, 1999
[Caption Omitted in Printing]

INTERROGATORY NO. 1: State the number of Tecumseh students who were drug tested by Defendants in the 1998-1999 school year and the 1999-2000 school year, the number who tested positive, the substance that was identified in each positive test, and the competitive extracurricular activity or activities in which the student engaged causing him or her to be subject to the Drug Testing Policy.

RESPONSE TO INTERROGATORY NO. 1: The number of students drug tested in the 1998-1999 school year was 239. The number of students drug tested in the 1999-2000 school year was 266. The number of students who tested positive and the substance that was identified in each positive test was previously supplied to you in document form pursuant to your first request for production of documents transmitted to this firm on September 13, 1999. The competitive activities in

which the student engaged causing them to be subject to the Drug Testing Policy are produced in the packet entitled "Response to Interrogatory No. 1 in Response to Request for Production of Documents, Second Set, No. 3."

INTERROGATORY NO. 2: State the number of Tecumseh students, broken down by school, who participated in each non-athletic activity covered by the Drug Testing Policy for the 1998-1999 and 1999-2000 school years.

RESPONSE TO INTERROGATORY NO. 2:

FOR THE 1998-1999 SCHOOL YEAR

Middle School

Band	56
FFA	30
Vocal Music	46

High School

FFA	208
FHA	119
Band	70
Academic Team	14
Vocal Music	75

FOR THE 1999-2000 SCHOOL YEAR
(first term only)

Middle School

Band	52
FFA	29
Vocal Music	44

High School

FFA	100
FHA	63
Band	67
Academic Team	16
Vocal Music	65

INTERROGATORY NO. 3: State any extracurricular activities participated in by any Tecumseh student who has been caught with drugs or disciplined for drugs in the last four years and whether that student was actively involved in the activity at the time of the incident.

RESPONSE TO INTERROGATORY NO. 3: Objection. This interrogatory seeks information which is burdensome and impossible to provide a response because the District does not maintain any records that can be cross referenced for the last four years identifying students "who has been caught with drugs" or "disciplined for drugs" and if that student was "actively" involved in any extracurricular activity at the time. Without waiving any objection, in the middle school in the last four years, Don Warden, the Principal of the middle school, can testify that students enrolled in Athletics, FFA, Vocal, and Band have been caught with drugs or disciplined for drugs over the last four years. At the high school, James Blue, the Principal of the High School, can testify that students enrolled in FFA, FHA and Athletics have been caught with drugs or disciplined for drugs over the last four years.

INTERROGATORY NO. 4: Of the "Student Activity Offerings" ("Organizations" and "Activities") listed on page 36 of the Tecumseh High School 1999-2000 Academic Planning Guide, identify every student organization or student activity which involved student overnight travel during the past five years.

RESPONSE TO INTERROGATORY NO. 4: During the past five years, the following organizations have involved overnight travel:

Student Council	Mu Alpha Theta
Beta Club	FFA
Band	Choir
Wrestling	Baseball
Academic	TeamCheerleading
Pon Poms	

INTERROGATORY NO. 5: For each organization or activity identified in response to the previous interrogatory, state whether students were required to meet O.S.S.A.A. eligibility rules in order to join the organization or activity and whether students were required to, and in fact did, meet O.S.S.A.A. eligibility rules in order to participate in the overnight travel of the organization or activity.

RESPONSE TO INTERROGATORY NO. 5: No students were required to meet O.S.S.A.A. eligibility rules in order to join the organizations which engaged in overnight travel over the past five years. Students belonging to Mu Alpha Theta participating in overnight travel were not required to meet any O.S.S.A.A. eligibility rules. Therefore, Defendants cannot determine whether or not, those students "in fact did, meet O.S.S.A.A. eligibility rules." Students belonging to Student Council, Beta Club and some students belonging to FFA participating in overnight travel were required to meet some O.S.S.A.A. eligibility rules. Students participating in overnight travel in Wrestling, Baseball, Cheerleading and Pon Poms were required to meet all eligibility rules of the O.S.S.A.A., and students in Band, Choir and some students involved in FFA participating in overnight travel were required to meet only those eligibility rules of the O.S.S.A.A. relating to non-athletic activities.

INTERROGATORY NO. 6: Identify every occasion of which Defendant is aware in which any Tecumseh student or any other student of an Oklahoma public school has been made ineligible for competition under the portion of O.S.S.A.A. Rule 4, Section 1(a), which states that a student may be deemed ineligible if the student's "conduct or character outside the school is such as to reflect discredit upon the school." For any such occasion, state the dates, reasons and circumstances for the student's ineligibility.

RESPONSE TO INTERROGATORY NO. 6: Objection. This interrogatory seeks information which is burdensome as phrased. The definition of "Defendant" encompasses every employee of the District and Defendant has approximately 260 employees in many different areas of administration, teaching and support personnel. Further, this interrogatory seeks information concerning all students engaged in competition in the State of Oklahoma during an indefinite period, which information, if kept, would be kept by and be within the knowledge of the Oklahoma Secondary School Activities Association which came into existence in 1911. Without waiving this objection, the Defendant is not "aware" of any student in Tecumseh or the State of Oklahoma made ineligible for competition under O.S.S.A.A. Rule 4, Section 1(a).

INTERROGATORY NO. 7: State the number of Tecumseh High School students pre-enrolled in each Academic Team class, each Band class, and each Choir class for each term or semester for each of the past five years; the number of students who actually enrolled in each Academic Team class, each Band class, and each Choir class for each term or semester for each of the past five years; and the number of students who completed Academic Team class, each FHA class, each FFA class, each Band class, and each Choir class for each term or semester for each of the past five years.

RESPONSE TO INTERROGATORY NO. 7: Objection. This interrogatory seeks information which is unavailable and/or burdensome as phrased. The District does not maintain its pre-enrollment forms. Furthermore, in order to ascertain the information requested, each grade book for each class must be examined to scrutinize the history of every student. Without waiving this objection, the number of students who actually enrolled in each class and the number of students who completed the class for each year are as follows:

1995-1996 SCHOOL YEAR

Organization	Enrolled	Completed
FFA	227	214
FHA	138	119
Band	64	57
Academic Team	14	13
Vocal Music	(These Records cannot be Found.	62

1996-1997 SCHOOL YEAR

Organization	Enrolled	Completed
FFA	438	406
FHA	111	100
Band	(These records cannot be found.)	
Academic Team	16	16
Vocal Music	102	81

1997-1998 SCHOOL YEAR

Organization	Enrolled	Completed
FFA	258	222
FHA	115	106
Band	75	71
Academic Team	17	16
Vocal Music	(These records cannot be found.)	71

1998-1999 SCHOOL YEAR

Organization	Enrolled	Completed
FFA	208	189
FHA	119	117
Band	70	69
Academic Team	14	13
Vocal Music	75	62

1999-2000 SCHOOL YEAR
(first term only)

Organization	Enrolled	Completed
FFA	93	100
FHA	63	56
Band	60	67
Academic Team	16	16
Vocal Music	50	65

INTERROGATORY NO. 8: If your response to Plaintiffs' Request for Admission No. 3 is anything other than an unqualified admission, state each risk of immediate physical harm from participating in interscholastic competitions of the Choir, Band, FHA, or Academic Team and list every occasion in which a student has suffered such harm as a result of participating in such interscholastic competitions.

RESPONSE TO INTERROGATORY NO. 8: With regard to Choir, the deposition of Carolyn Daugherty and the deposition of Dean Rogers contain the testimony of the dangers of competition. In addition, Carolyn Daugherty will testify that if a student is under the effects of drugs, his/her performance is likely to be affected. The physical safety of the student would be questionable since standing long periods of time for a concert or contest is necessary. Their mental alertness would be hampered—making it harder to work effectively with the rest of the choir in performing as a single unit. Because judgment would be impaired, behavior would be unacceptable as it would be unruly and obnoxious. Their reputation and self worth would be marred making it hard to regain the confidence and motivation to participate in any activity.

With regard to Band, the Band sponsor will testify that during Marching Band the students must be able to maneuver in and around other students in formations rather quickly at times and with great precision; if the student was in an altered state, this could affect timing and cause people to get hurt, fall down, get smashed into, *etc.*, which could also damage expensive instruments.

Color Guard students swinging six-foot poles around in an altered state could seriously hurt somebody or cause damage to instruments.

Band is a very physical activity that takes great precision in extremely hot and extremely cold weather. Participating under these conditions in an altered state could be very hazardous to the student and other participating students.

With regard to FHA, Sheila Evans, the FHA Sponsor will testify that students who compete in STAR events would be leaving school and would not always be constantly under the supervision of a District employee. There could be a health risk because of this.

With regard to Academic Team, Nancy Warwick, the Academic Team Sponsor will testify that a student participating in this activity would need to get to and from the activity itself and possibly transport others to and from the activity, including conference meets which are held in Shawnee. At other times they would be driving to catch a bus. Once at the meet, they must be cognizant of their surroundings by being able to find buildings and rooms on a school's campus. Once in the room, they would have to be able to listen and follow instructions. The ability to react and respond quickly is essential to success. Other students on the team will be relying on each other to perform based on what they have learned in the past and to respond quickly. An impaired student who cannot perform as expected causes discord among the team members. If a student becomes sick because of something they have taken, the coaches would have to leave the activity to provide for the ill student. The student's health would be the first priority, possibly resulting in a forfeit of the contest. If a student misbehaves due to some drug they have taken, this could also result in the team's forfeiting the contest or being kicked out of the contest. One student's health on the team will definitely affect all members.

At this time, Defendant has no knowledge of a student who suffered immediate physical harm as a result of participating in Choir, Band, FHA or Academic Team.

INTERROGATORY NO. 9: If your response to Plaintiffs' Request for Admission No. 5 is anything other than an unqualified admission, state the risks of immediate physical harm that are unique to FFA competitions (*i.e.*, a risk of

immediate physical harm that arises in FFA competitions but does not arise in Agriculture classes or in non-competitive FFA activities) and list every occasion in which a student has suffered a harm that is unique to FFA competitions.

RESPONSE TO INTERROGATORY NO. 9: With regard to FFA, the dangers that arise in competitions that do not arise in non-competitive activities and the occasions of harm are contained in the deposition of Dean Rogers.

Additionally, Danny Sterling, FFA Sponsor, will testify that one of the most popular FFA activities is exhibit livestock. This consists of physically handling beef, swine, and sheep. These animals are trained to respond to various methods of restraining, voice commands, cues from special equipment (halters, show sticks, *etc.*), and the physical "leading" of the animals.

Many of these animals are sometimes very nervous at livestock shows. Especially, if they have not been "shown" very often. Some of the animals are just more nervous than others regardless of how often they have been exhibited. Even the more calm animals can sometimes be frightened unexpectedly and try to flee from the person who is in control of them.

Because of the above factors, it is imperative that whoever is exhibiting the animal be in as much physical control as possible of the animal. When you consider the size and strength of many of these animals coupled with the size and strength of the average human, the probability of a person physically restraining an animal that is trying to flee is very small. Therefore, a person on drugs or in an altered state increases the risk of getting not only themselves injured, but also those in the immediate area.

INTERROGATORY NO. 10: If your response to Plaintiffs' Request for Admission No. 6 is anything other than an unqualified admission, identify all incidents of drug usage by

Tecumseh students of which Defendants have specific evidence and which are not mentioned in Defendants' Statement of Uncontroverted Fact, identify all witnesses with knowledge of such incidents, and identify all documents that refer or relate to such incidents.

RESPONSE TO INTERROGATORY NO. 10: Objection. This interrogatory seeks information which is burdensome as phrased. The definition of "Defendants" encompasses every employee of the District and Defendant has approximately 260 employees in many different areas of administration, teaching and support personnel. Furthermore, the Request for Admission covers an infinite period of time. Without waiving this objection, you were previously provided disciplinary referrals relating to incidents of drug usage in the high school pursuant to Plaintiffs' requests for production transmitted on September 13, 1999. The testimony of James Blue, whom Plaintiffs deposed on October 25, 1999, testified that all instances where the parents were called, the interview with the student, the odor of the student or his appearance indicated evidence of drug usage. The disciplinary referrals indicate the date and the witnesses to each incident. You were also previously provided disciplinary referrals relating to the middle schools.

Other incidents currently known to the District and not mentioned in the Statement of Uncontroverted Facts are also contained in the disciplinary referrals produced in Response to Interrogatory No. 12 herein.

In addition, other incidents currently known are:

1997-1998 School Year

Sixth-grade boy student and counselor discussed his Ritalin medication. The conversation led him to speak about his past drug use when he lived in Arizona with his father.—Witness, Julie Dawson.

The drug dog hit on a seventh-grade boy. There was a drug scent, but no substance was found.—Witness, Julie Dawson.

An eighth-grade boy, a former gang member when he lived in Oklahoma City, confided in the counselor about past drug use.—Witness, Julie Dawson.

An eighth-grade boy was offered a pink pill by a seventh-grade boy at breakfast.—Witness, Julie Dawson.

A seventh-grade boy student had been in serious trouble in class. He confided in his seventh-grade teacher that there is drug use by his father and two high school sisters. He admits he used the drugs in his father's home. His mother also has drug use in her house. The child thinks that it is mostly the boyfriend who smokes "pot." DHS was contacted to help with this issue.—Witness, Julie Dawson.

An eighth-grade girl student that is new to Tecumseh told other eighth-grade girls that she is using "pot." One of the other students informed the counselor.—Witness, Julie Dawson.

Two eighth-grade boys were expelled for selling drugs at school. The counselor does not know what the substance was. The boys they sold it to told the sellers that the counselor saw the transaction and turned them in so that they could get some of the heat off of them. One seller was an athlete. Two of the buyers were band students, eighth grade boys. Earlier in the year the mother of one of these boys asked the counselor's advice about her son's drug problems.—Witness, Julie Dawson.

A sixth-grade girl student (she is in vocal) showed a marijuana joint to another sixth-grade girl. She put it back in her purse. The girl who saw it told the counselor and the Assistant Principal was notified. The girl

claimed it was her aunt's drug and that her mother was aware that her aunt used drugs. The girl claimed that it was not hers and she was not going to smoke it.—Witness, Julie Dawson.

1998-1999 School Year

Two students who tested positive under the Drug Testing Policy at the high school.—Witness, James Blue—documents already provided.

One student who tested positive under the Drug Testing Policy at the middle school—Witness, Don Warden—document already provided.

A band student and a vocal student who confided in a school counselor about their drug use.—Witness, Julie Dawson.

A Tecumseh student who was stopped by police in an automobile in which drugs were found by police.—Witness, Julie Dawson.

A Tecumseh student who after running away from home was found and tested positive for PCP and marijuana.—Witness, Julie Dawson.

A Tecumseh student was found in the home of another student smoking marijuana.—Witness, Kay De Somer.

An eighth-grade girl talked to the counselor about getting in trouble with her mother when her mother found drugs in her room. She is in vocal and athletics. She told her mother they were not hers, but her mother did not trust her.—Witness, Julie Dawson.

A seventh-grade girl that has been in Carter Hall for a while wrote a letter to her friend and addressed it to the counselor to give to her friend. She made claims in the letter that she had been actively using drugs. The counselor did not give this letter to the friend. At a later

time, the counselor let her and her mother know about the letter.—Witness, Julie Dawson.

1999-2000 School Year

Two ninth-grade students received counseling for the use of marijuana.—Witnesses, Russ Rutledge/Ruth Clouber.

Nine tenth-grade students received counseling for the use of marijuana.—Witnesses, Russ Rutledge/Ruth Clouber.

One tenth-grade student received counseling for the use of marijuana and cocaine.—Witnesses, Russ Rutledge/Ruth Clouber.

One tenth-grade student received counseling for the use of marijuana and alcohol.—Witnesses, Russ Rutledge/Ruth Clouber.

Two eleventh-grade students received counseling for the use of marijuana.—Witnesses, Russ Rutledge/Ruth Clouber.

One eleventh-grade student received counseling for the use of marijuana and alcohol.—Witnesses, Russ Rutledge/Ruth Clouber.

Eight twelfth-grade students received counseling for the use of marijuana.—Witnesses, Russ Rutledge/Ruth Clouber.

A seventh-grade student spoke to counselor about a party in his neighborhood. He said that he got very drunk and high on drugs. He expressed a concern and stated that he did not want to use. The counselor talked to him again about the drug use and its effects.—Witness, Julie Dawson.

The counselor visited with a seventh-grade boy at the alternative school who also mentioned the same party as

the student the counselor talked to previously. He also claimed to drink and smoke marijuana.—Witness, Julie Dawson.

INTERROGATORY NO. 11: If your response to Plaintiffs' Request for Admission 7 is anything other than an unqualified admission, state every fact, identify every witness and identify every document in support of your denial.

RESPONSE TO INTERROGATORY NO. 11: See Response to Request for Admission No. 7.

INTERROGATORY NO. 12: If your response to Plaintiffs' Request for Admission No. 9 is anything other than an unqualified admission, state every fact, identify every witness and identify every document in support of your denial.

RESPONSE TO INTERROGATORY NO. 12: The documents you have already been provided, and the documents provided to you in Response to Request for Production, Second Set, No. 3, certain documentation of disciplinary actions. The high school cannot locate its disciplinary actions. The high school cannot locate its disciplinary referrals for the 1995-1996 school year. The middle school has not determined if documentation is available for the 1994-1995 or 1995-1996 school year. However, Defendants believe the submitted documents support its denial of Plaintiffs' Request for Admission No. 9. Please advise us if additional documentation is required. The witnesses to support this denial are James Blue, High School Principal; Don Warden, Middle School Principal; Karen Kinsey, Assistant Middle School Principal; Grant Gower, Assistant High School Principal; and Roy Capps, Assistant High School Principal; Joe Hillman, former Assistant High School Principal; and Susan Foote, former Assistant Middle School Principal.

INTERROGATORY NO. 13: If your response to Plaintiffs' Request for Admission No. 10 is anything other than an unqualified admission, state every fact, identify every witness and identify every document in support of your denial.

RESPONSE TO INTERROGATORY NO. 13: Objection. This interrogatory seeks information which is burdensome as phrased. The definition of "Defendant" encompasses any employee of District and Defendant has approximately 260 employees in many different areas of administration, teaching and support personnel. Without waiving this objection, in addition to the specific known instances of drug use and parent concerns identified in these and the prior responses by Defendants to Plaintiffs' discovery, the deposition testimony of teacher Sheila Evans indicates a change in attitude among students within the last ten years with regard to the students' apparent openness and lack of condemnation in discussing the propriety of drug use. The documents provided in response to Request for Production No. 3 indicate the increase in disciplinary referrals. These give Defendants reason to believe the level of drug use by Tecumseh students may have increased over the past ten years.

INTERROGATORY NO. 14: If your response to Plaintiffs' Request for Admission No. 16 is anything other than an unqualified admission, state every fact, identify every witness and identify every document in support of your denial.

RESPONSE TO INTERROGATORY NO. 14: Dean Rogers, Board Member; Tom Wilsie, Superintendent; Danny Jacobs, Assistant Superintendent; James Blue, Principal; and Don Warden, Principal. The deposition of Danny Jacobs taken by Plaintiffs explains the District's policy for any student unable to pay the fee. A student who refuses to pay the fee would be tantamount to a refusal to submit to a drug test, the consequences of which are found in the Drug Testing Policy.

INTERROGATORY NO. 15: If your response to Plaintiffs' Request for Admission No. 17 is anything other than an unqualified admission, state the number of students who use

drugs and have parents who have used drugs, the date of each such student's drug use, and how the drug use of student and parent is known to Defendants.

RESPONSE TO INTERROGATORY NO. 15: Objection. This interrogatory seeks information which is burdensome as phrased. The definition of "Defendant" encompasses every employee of the District and Defendant has approximately 260 employees in many different areas of administration, teaching and support personnel. Further, the information sought covers an indefinite period of time. Without waiving said objection, the deposition of Dean Rogers contains information on a student who used his parents' drugs. Additionally, during the 1997-1998 school year, a seventh-grade student confided in the school counselor, Julie Dawson, of using drugs obtained from his father. Furthermore, there have been a number of occasions where students have talked to counselors about drug use in the home, without confessing to the students' own drug use. For example, in the last three years, the Middle School counselor has discussed the following:

1997-1998 School Year

A sixth-grade boy was referred to Health Department Counseling after talking with the mother about drug use in the home by the father. The Department of Human Services had intervened in the past because of the mother's drug use.

An eighth-grade girl shared that they moved from Oklahoma City to Tecumseh recently after being released by DHS. The student had previously turned her mother in to DHS for drug use in the home.

An eighth-grade girl spoke to the counselor about her belief that her mother might have acquired a disease through drug use. Shortly after the counselor also met with the father and he verified the story the child told about her mother.

1998-1999 School Year

Two seventh-grade boys who were football players went to the counselor at two separate times and they each were worried about a drug test coming back positive if they were tested. One boy was around his father when the father used marijuana. The other boy was in his mother's home for visits and said that there was marijuana use in that home.

The counselor spoke with the mother of a seventh-grade boy about the exposure that her son had to drugs when he stayed with his father. They discussed the possibility of not allowing him to see his father if he used drugs around him.

An eighth-grade boy who also has a seventh-grade sister spoke to the counselor about his father. When asked about his mother, he told the counselor that she was in jail for using drugs.

1999-2000 School Year

The counselor spoke with a sixth-grade boy about his father's drug rehabilitation. His father had a history of drug use and is receiving treatment. The boy is having a hard time with his father being away. His mother is also gone this week to help with a portion of the treatment.

A seventh-grade boy is very discouraged at home. He is not happy living with his mother. He has only lived with her for about two years because she was a drug user and had been in jail. He is not getting along with his mom and especially not getting along with her boyfriend. He has seen drugs in the house lately.

THE CENTER FOR EDUCATION
LAW, INC.

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VERIFICATION

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

Tom Wilsie, Superintendent of Independent School District No. 92 of Pottawatomie County, Oklahoma, in my official capacity, of lawful age, being first duly sworn, upon oath states that I have read the foregoing Defendants' Responses to Plaintiffs' Interrogatories, First Set, that I am familiar with the matters set forth therein, and that the same are true to the best of my information and belief.

/s/ Tom Wilsie
TOM WILSIE, Superintendent of Independent School District No. 92 of Pottawatomie County, Oklahoma

Subscribed and sworn to before me this 17th day of December, 1999.

/s/ Teresa Johnson
Notary Public

My Commission Expires:
08/21/01

(Seal)

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DEFENDANTS' RESPONSES TO PLAINTIFFS' REQUESTS FOR ADMISSIONS, FIRST SET

Mailed to Plaintiff's Attorney on December 17, 1999
[Caption Omitted in Printing]

REQUEST FOR ADMISSION NO. 1: Admit that, in addition to the activities subject to the Drug Testing Policy,

other school-sponsored activities (for example, Beta Club) are privileges and are voluntary.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admitted.

REQUEST FOR ADMISSION NO. 2: Admit that, in addition to the activities subject to the Drug Testing Policy, other school-sponsored activities (for example, Beta Club) involve overnight travel to other towns, cities and states; that students sometimes share sleeping accommodations during such travel; and that during such travel students are sometimes allowed free time to journey into the surrounding area without adult supervision.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admitted.

REQUEST FOR ADMISSION NO. 3: Admit that Tecumseh students do not, by mere virtue of participation in interscholastic competitions of the Choir, Band, FHA, or Academic Team, engage in activities that pose a risk of immediate physical harm to themselves, to other students, or to the public.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Denied.

REQUEST FOR ADMISSION NO. 4: Admit that some Tecumseh students, as part of their curricular activities, engage in activities (for example, driving motor vehicles in Drivers' Education class, use of power cutting tools in Agriculture classes, or using certain chemicals in chemistry laboratory class) that pose a greater risk of immediate physical harm than competitions of the Choir, Band, FHA, or Academic Team.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: It is admitted that some Tecumseh students engage in activities such as "driving motor vehicles in Drivers' Education class, use of power cutting tools in Agriculture classes, or using

certain chemicals in chemistry laboratory" tests. However, these activities are directly supervised by a District employee in a much more structured environment than students in competition. It is therefore denied that the risk of physical harm is greater or more immediate in the curricular activities.

REQUEST FOR ADMISSION NO. 5: Admit that any risk of immediate physical harm posed by participation in FFA competitions can also be faced by students enrolled in Agriculture classes or by students who participate in FFA activities other than competitions.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Denied.

REQUEST FOR ADMISSION NO. 6: Admit that Defendants' Statement of Uncontroverted Fact, filed on November 17, 1999 in conjunction with Defendants' Motion for Summary Judgment, sets forth every incident of drug usage by Tecumseh students of which Defendants have specific evidence.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Denied.

REQUEST FOR ADMISSION NO. 7: Admit that Tecumseh students are not, by mere virtue of participation in interscholastic competitions of the school Choir, Band, FHA, FFA, or Academic Team, required to (a) undergo any physical examination; (b) engage in communal undress; (c) take showers in view of other students; (d) use toilet stalls that do not have doors; or (e) acquire insurance coverage or sign a waiver of insurance.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: It is admitted that no student in Tecumseh is required to engage in communal undress, take showers in view of other students or use toilet stalls that do not have doors. Moreover, only

students who participate in Athletics are required to undergo physical examinations and only students participating in football are required to acquire insurance.

REQUEST FOR ADMISSION NO. 8: Admit that Tecumseh students are not in a state of rebellion that is being fueled by alcohol and drug abuse.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Defendant is unable to admit or deny this request because it is unclear and ambiguous wherein Defendant is asked to determine what the unexplained phrase "state of rebellion" means. It is admitted that students have not engaged in protests regarding drugs. It is denied that students at Tecumseh schools who openly and unabashedly talk about and refer to alcohol and drug use as an activity that should not be condemned are not in a "state of rebellion."

REQUEST FOR ADMISSION NO. 9: Admit that disciplinary actions in Defendants' schools have not, at any time during the past five years, reached epidemic proportions.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Denied.

REQUEST FOR ADMISSION NO. 10: Admit that Defendants have no reason to believe that the level of drug use by Tecumseh students has either increased or decreased significantly over the past ten years.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: It is admitted that Defendants have no reason to believe that the level of drug use by Tecumseh students has decreased significantly over the past ten years. The remainder of Request for Admission No. 10 is denied.

REQUEST FOR ADMISSION NO. 11: Admit that, to the extent that drug use exists among Tecumseh students, the students who participate in competitions of the Choir, Band, FFA, FHA, and Academic Team are not the leaders of any drug culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Admitted.

REQUEST FOR ADMISSION NO. 12: Admit that Defendants have no reason to believe that Tecumseh students have used drugs to enhance their performance in competitions of the Choir, Band, FFA, FHA, and Academic Team.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Denied.

REQUEST FOR ADMISSION NO. 13: Admit that participation in classroom activities is a valuable part of the educational experience of Tecumseh students.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Admitted.

REQUEST FOR ADMISSION NO. 14: Admit that, under the terms of the Drug Testing Policy (at page 3), no student shall be allowed to practice or participate in any of the following extracurricular activities unless the student has returned the properly signed "Student Drug Testing Consent Form:" Choir, Band, FFA, FHA, and Academic Team.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: It is admitted that the Drug Testing Policy makes that statement at Page 3. It is denied that the Policy is applied to practice or participation in non-competitive events.

REQUEST FOR ADMISSION NO. 15: Admit that, under the terms of the Drug Testing Policy (at page 7), a student participating in competitions of the Choir, Band, FFA, FHA, or Academic Team who refuses to submit to a drug use test authorized under the policy shall not be eligible to participate in any of the extracurricular activities of the Choir, Band, FFA, FHA, or Academic Team, including all meetings, practices, performances and competitions for the remainder of the school year.

RESPONSE TO REQUEST FOR ADMISSION NO. 15: It is admitted that such statement is made on Page 7 of the Policy. It is denied that the Policy is applied to meetings, performances, or practices for non-competitive events.

REQUEST FOR ADMISSION NO. 16: Admit that Defendants do not have a formal policy to waive or cover the student fee under the Drug Testing Policy for any student who is unable or unwilling to pay the fee.

RESPONSE TO REQUEST FOR ADMISSION NO. 16: Denied.

REQUEST FOR ADMISSION NO. 17: Admit that Defendants have no evidence of a specific instance of both a Tecumseh student using drugs and the student's parent or parents having at some time used drugs.

RESPONSE TO REQUEST FOR ADMISSION NO. 17: Denied.

THE CENTER FOR EDUCATION
LAW, INC.

/s/ Linda Maria Meoli
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Attorneys for Defendants

VERIFICATION

STATE OF OKLAHOMA)
) ss
COUNTY OF _____)

Tom Wilsie, Superintendent of Independent School District No. 92 of Pottawatomie County, Oklahoma, in my official capacity, of lawful age, being first duly sworn, upon oath states that I have read the foregoing Defendants' Responses to Plaintiffs' Requests For Admissions, First Set, that I am familiar with the matters set forth therein, and that the same are true to the best of my information and belief.

/s/ Tom Wilsie
TOM WILSIE, Superintendent of Independent School District No. 92 of Pottawatomie County, Oklahoma

Subscribed and sworn to before me this 17th day of December, 1999.

/s/ Teresa Johnson
Notary Public

My Commission Expires:
8/21/01

(Seal)

[Certificate of Service Omitted in Printing]

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF POTTAWATOMIE)

I, Nancy Warwick, of lawful age, depose and state:

1. I am employed as a teacher/coach by Independent School District No. 92 of Pottawatomie County, Oklahoma, also known as the Tecumseh School District ("District").

2. I have been employed by District for 17 years. I am currently assigned as teacher of the Academic Class and have coached the Academic Team for the last 12 years.

3. The curriculum of the Academic Class includes instruction in subjects such as literature, history, mathematics and fine arts, and also includes classroom activities that test the students' speed and accuracy in answering questions posed to them in those subject areas. Students who are eligible for interscholastic competition are required to perform these classroom activities for graded classroom work and also utilize the same activities as practice for interscholastic competition. Students who are not eligible for interscholastic competition for any reason are required to perform these activities for graded classroom work. The failure to perform these classroom activities will result in a lower grade in Academic Class, whether or not they choose to participate in competition.

4. There are no classroom activities in the Academic Class that are performed by students solely for the purpose of interscholastic competition. A student enrolled in and attending the Academic Class is not precluded from participating in any classroom activity.

5. For a major part of the first semester of the 1999-2000 school year, Plaintiff Daniel James was precluded from participating in competition because he failed to meet scholastic eligibility requirements. However, he was not precluded from engaging, and was required to engage, in all classroom activities conducted in the Academic Class during the school day. He failed the first term of Academic Class and received a grade of "D" for the second term because of his failure to complete class assignments.

6.Plaintiff James is not currently enrolled in Academic Class. No Academic Class is offered to students for this current term.

/s/ Nancy Warwick
NANCY WARWICK

Subscribed and sworn to before me this 18th day of January, 2000.

/s/ Ronda Tillman
Notary Public

My Commission Expires:
8-24-2002

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF TULSA)

I, David Weaver, of lawful age, depose and state:

1. I am the Vice President and co-owner of Drugs of Abuse Testing Laboratory, Inc. (DATL), 4946 East 49th Street, Tulsa, Oklahoma, the company that screens urine samples for the presence of illegal substances for Independent School District No. 92 of Pottawatomie County, Oklahoma, also known as the Tecumseh School District ("District").

2. I earned a Bachelor of Science in Microbiology and Medical Technology from Oklahoma State University and have engaged in the business of screening urine samples for twenty-three years.

3. The District utilizes a Urine Substance Abuse Panel for random sample testing which screens for six substances. The substances screened and the usual detection period for the substances are as follows:

Amphetamines	1-2 days
Cannabinoid Metabolites	1-77 days
Cocaine	2-4 days
Opiates	2 days
Barbiturates	1 day to several weeks
Benzodiazepines	3 days to 6 weeks

4. The following additional substances can be detected in the urine sample for the following periods:

Ethanol	1 hour per mixed drink, beer or glass of wine
Nicotine	detected amount reduced by 50% approximately every 17 hours
LSD	1-5 days

/s/ David Weaver
DAVID WEAVER

Subscribed and sworn to before me this 15th day of January, 2000.

My Commission Expires:
9-21-2002

/s/ Michelle Neftzger
Notary Public

DEPOSITION OF DEAN ROGERS
taken on behalf of the Plaintiff on September 24, 1999,
at Norman, Oklahoma.

DIRECT EXAMINATION BY MR. BOYD:

[9] (117) [1] his name—offered me some pills on the bus.

Q. You don't know what the pills were?

A. No.

Q. Okay. How many times did you yourself actually observe students using drugs during that 72-73 school year?

A. Well, smoking the pot, probable three, three times.

Q. Did you have some reason to think that drug use was more widespread though than just the incidents that you personally saw?

A. Yes.

Q. What was your basis for thinking that?

A. Because the chief of police at Tecumseh 1had asked my daughter to look for a certain car that came on lunch hour down through there and just passed through and just kind of showed down and kids would run out there around the door and then it would just go on out across the little bridge and back up to the highway.

And she one year carried her books the whole year because the girl that she lockered which, her boyfriend and his brother sold drugs and we were confronted with that here at Norman when we came for band day.

* * * *

[1] Since this matter was presented to the District Court below on cross-motions for Summary Judgment, the evidence was attached to the Motions as required, including excerpts from depositions. As an aid to the Court, in addition to the page number of the deposition below, which is indicated in brackets preceding the deposition testimony, the page number of the Appellant's Appendix filed in the 10th Circuit is indicated in parentheses.

[39] (463)

Q. The French Club is not covered?

A. No.

Q. And all those activities you just listed what they have in common is what?

A. Competition. Competitiveness.

Q. They all involve competition?

A. (Nods head)

Q. And all the activities, all the extra-curricular activities that do not involve competition they are not included in the policy; is that correct?

A. They're not included.

Q. Okay. Can you tell me what the competition is that the FHA does?

A. No.

Q. Does the Art Club do any competitions?

A. Not at this time.

Q. I understand there's been a Math Club from time to time. I think it's defunct this year, but a couple of years ago there was a Math Club, right?

A. Yes.

Q. If the math students decided that they wanted to get together after school and see who could perform calculations the fastest, would they [40] (464) then become subject to the drug test?

A. Among theirselves?

Q. Yes, just the Tecumseh High School students.

If the Tecumseh High School Math Club members wanted to compete to see who could do the calculations the fastest, would that make them subject to this drug testing policy?

A. No, because they're not in competition with other schools.

Q. Okay. So it's competition—

A. They're just—excuse me.

Q. Go right ahead, please.

A. They're just being competitive among theirselves. They're not going out into the community and representing Tecumseh school per se as a Math Club that is going to a competition.

Q. Okay. So the key to understanding who is included under this drug testing policy is that it is students who represent the school in competitions with other schools?

A. Yes.

Q. So a competition that was just among the Tecumseh students, no matter how intense that competition was, they wouldn't be included under [41] (465) this—

A. No.

Q. —policy?

BY MS. MEOLI: Let him finish his question before you answer.

BY MR. BOYD: I'm now finished.

You can answer.

BY THE WITNESS: No.

[42] (466)

Q. Okay. Well, let's go through each one of the activities and tell me, please, if you would, how a student doing each of those activities—

A. Okay.

Q. —could get hurt or could hurt other people if they were under the influence of drugs. And please focus on the activity. I understand that you certainly believe that if a student—if anybody, if any of us were under the influence of drugs that could pose danger. I mean, that would be true sort of across the board, right?

A. Right.

Q. So what I want you to do is focus on each of those activities and if you're doing that activity what is it about that activity that becomes especially dangerous if you're under the influence of illegal drugs or alcohol, okay?

A. Okay. The athletes without a clear mind and being under the influence of drugs often don't [43] (467) know their inabilities of running and hitting someone, hitting them wrong, you know, things that would not be normally done in the way a coach would coach them to hit the person to handle theirselves.

Q. I'm sorry. So let me just—I'm going to follow-up on each of these, okay?

So the athletes could suffer physical injuries because of the physical activities they are doing, broken bones, torn ligaments and things of that sort; is that correct?

A. Yes.

Q. That's what you mean by the harm that could come to the athletes; is that right?

A. Yes.

Q. Okay. Go on to the next one, please.

A. Okay. The cheerleaders it's the same thing because they have these where they pyramid up and then drop the girl, things like this, so that could have the same effect as I spoke about the athletes.

They handle different ones in pyramids and things and they can drop them, they can fall wrong if they're not alert on how to fall.

Q. Okay. So, again, I'm going to—you go as long as you want to on the cheerleaders and then [44] (468) I'm going to ask you some questions about cheerleaders before you go on to the next one, okay?

A. Okay. Go.

Q. Okay. You mentioned the pyramid building. That's where the cheerleaders stack up on top of each other and maybe, you know, get what, 10 or 15 feet off the ground? Does that sound about right?

A. Yes.

Q. Are there any other cheerleading activities that could become more dangerous than they already are because of drugs?

A. Yes. Their acrobatic moves.

Q. What sort of acrobatic moves?

A. Well, they do backflips and splits and, you know, things like that. And if they don't land right or if they don't hit right they're going to hurt theirself plus they may hurt someone else falling into another person or something.

Q. Okay. So the pyramids, the acrobatic moves. Are there any other things that the cheerleaders do?

A. Well, when they are out in the public you don't want them loud and boisterous or you know what I mean when they're like eating at some place. [45] (469) These things all come into that, too.

Q. Okay. Tell me what you mean by that.

A. Well, when you take a group into a restaurant you want to be able to come back to that restaurant.

If you've got two or three that are not in their—control of their faculties, they may get loud and boisterous and things like that. And so if they see them that way, they don't want them coming back.

Q. Okay. Anything else with the cheerleaders in particular that you feel—

A. No.

Q. Okay. Let's move on to the next one.

A. Okay. Pom Pon.

Q. Yes.

A. It's the same thing. They do a lot of acrobatic moves, a lot of dance moves and things like that. And if they're not in their control of theirself they can hurt theirself or someone else if they wanted, because they do do a lot of dancing, acrobatic moves, running, and the things like that. And the same about going into a public place holds with them, too.

Q. Okay. The next?

[46] (470)

A. The band. The band goes to a lot of the away ball games. Of course, they perform at our home ball games.

They have concerts and things and they need—physically they need to be in control in order to march, to compilate the band movements that they are supposed to be in at that time. They need to present theirselves well.

Q. So in order to play well and to march well and to make a good impression they need to not 1be under the influence of drugs, is that what you're saying?

A. Yes. Would you like an example?

Q. Well, in a moment.

A. Okay. Okay.

Q. And I'll certainly give you a chance to give your example.

The band players don't do any acrobatics or pyramids or any of those kinds of things, do they?

A. No, no. They just do routines where they go counterclockwise and diagonal and, you know, and some things like that.

Q. I see. So there aren't any physical dangers that come up for the band members?

A. Not unless they run into each other.

[47] (471)

Q. Okay. But that—you're not saying that that's a reason to drug test them?

A. No, no.

Q. I mean, it's not fear of them hurting each other?

BY MS. MEOLI: Let him finish.

BY THE WITNESS: Okay.

BY MR. BOYD:

Q. I'll repeat it.

You're not saying that there is any danger of them seriously injuring themselves or other people; that's not a reason for this drug testing policy for the band, is it?

A. No.

Q. Okay. I think you wanted to give me an example of how the band needs to, you know, comport itself properly.

A. I have an example. My daughter was in band.

Q. Okay.

A. The boy that had offered her the pills on the bus the first day she rode the bus to school was a drummer. And he would be marching and he would just go off in left field and just beat the drums just—you know, he was staying with the [48] (472) music, but he was getting so loud and furious with it that it was drowning out everything else.

Q. So that's an embarrassment to the school as a whole?

A. Right. Right.

Q. And that incident right there, did that play a part in your wanting to include activities like band in this drug testing policy?

A. Yes.

Q. Okay. Let's go on to the next activity.

drug testing.

A. Vocal. The same thing holds as the band. They do a little dance and things like that. And they sing and we have a show choir that is vocal music. They perform. They go out into the public and perform and put on these little songs and dance with them and everything, so the same thing goes with them.

If they're not aware of where the end of the stage is or something like that, they can hurt theirself, they can possible hurt someone else, because a lot of times they are on a small stage. And so the same thing goes for them and they need to, you know, keep their mind about them.

Q. Okay.

[49] (473)

A. And they are representing the school, so they need to put their best foot forward.

Q. Okay. So I hear you saying two things and let me make sure I'm understanding you correctly.

A. Okay.

Q. One of the things is that for the choir members you do perceive one possible physical danger which is falling off of the stage?

A. Yes.

Q. Are there are any other physical dangers that the choir members face that might be increased because of drug use?

A. Not dangers, but not keeping up with the place they are supposed be and things like that. That could possibly eliminate them from competition, you know, where they wouldn't present theirself well and things like that.

Q. So being free of any influence of drugs or alcohol is important to succeeding at the competitions, right?

A. Right.

Q. It's important to putting their best foot forward to showing Tecumseh High School in their best light to the public, right?

[50] (474)

A. Right.

Q. The danger of falling off the stage, that's not really the main reason for including the choir, is it? It's more of these other things, right?

A. That could cause a physical problem. I think all of it is combined.

Q. Okay. What's next?

A. The FFA.

Q. Uh-huh.

A. Okay. The FFA is in competition in several different fields: showing their livestock, their speeches, their horticultural class. They go in competitions in all of this.

With the animals, if you don't have control of yourself you can't have control of the animal. And a 1500-pound steer getting loose isn't anything to stand in front of.

And, you know, all of the kids try helping each other catch these things when they get loose and things like that and it

happens to the best of them. But I don't feel like it would happen as much if they are in a full control of their mind and body.

Welding, you have equipment there that [51] (475) is very dangerous unless it is handled right. You have, like I said, the speech, they have competition in the speech and they need to be in full capacity in order to present theirself well in the speech contest. The horticultural team goes out and goes into competition on plants and things like that. They have a beef and dairy competition. These are just things that the different—a livestock judging team—that you have to be in full capacity of your being in order to have a clear mind in order to compete in these. And the only reason you're competing in it is to help you bring your school to the forefront in these competitions.

Q. And being under the influence of drugs or alcohol would decrease the team's ability to win at these competitions; is that right?

A. Right.

Q. And that's one of the reasons for the policy?

A. Yes.

Q. Okay. You also talked about, though, for FFA that there are some potential dangerous involved in handling animals and I guess welding as

* * * *

[58] (476) pounds and that's what they're the—all of students try getting their steers up to for show.

Q. Okay. So just to make sure I understand. The steer that got loose from the student that you believe was under the influence of drugs is exactly the same kind of animal and the same size animal as the steers that get loose on a very regular basis from the smaller students?

A. During the last two shows we haven't had any steers get loose, so it's not all the time. But they would be—they would be approximately the same size.

Q. Aside from this incident of the steer getting loose in the 1970s from the student under the influence of drugs, are you aware of any other examples of a student—well, hold on. Let me strike that, please.

No one was injured in that incident involving the student who was under the influence of drugs in which the steer got loose, were they?

A. Yes. One of the fair board members was injured. His collar bone broke, had an arm or shoulder pulled out of, (indicating) place. Yes.

* * * *

[61] (477)

Q. And are there any other incidents involving drugs or alcohol in FFA activities?

A. There's been an FFA student who was stopped and had paraphernalia and things in his car.

Q. That was not in connection with FFA activities?

A. Not at the actual competition, but he was an FFA student.

Q. Okay. Are there any other incidents?

A. No.

Q. I want to go back for a second to the second incident you described in which a student may have been under the influence of drugs and an animal got loose. What year did that take place?

A. '90, '91.

Q. And was anyone hurt during that incident?

[62] (478)

A. He was.

Q. What were his injuries?

A. He ripped his arm from the elbow down to his wrist, (indicating).

Q. So he had a cut from his elbow to his wrist?

A. Yes.

Q. Do you know whether the cut required stitches?
A. Someone took him to the AM/PM clinic.
Q. Could you tell me what that stands for, please.
A. The 24 hour.
Q. Oh, the AM/PM?
A. Yes.
Q. I get it. I thought it was some acronym for something?
A. No. And I don't really know whether he got stitches or not. I didn't see him the rest of the day. And then my grandchild wasn't showing the next day, so I wasn't out there. I don't know.
Q. Do you know anything else about his injury, whether he came back to school, whether he had to stay in the hospital? Do you know anything about that?

[63] (479)

A. No.
. . .
A. Academic team, I don't know that it would be physical. They're competing, but they have to present themself well to us and to, you know, whoever they're competing with.
Q. Okay.
A. But as far as the physical they shouldn't unless they fall down or something like that. They shouldn't be really physical unless they're horseplaying, you know what I mean.

* * * *

[67] (480)

And I feel like whether it is physical or nonphysical since athletes and all of those have to be, I think it's only fair that they be tested, too.
Q. And there's not any element of physical danger there, is there?
A. No.

Q. And there's not any factor of them embarrassing the school while they travel, right?
A. Right.
Q. It's simply that, in your opinion, the students who represent the school in competition need to put forth their best effort and best represent the school and that drugs might interfere with that; is that right?
A. Correct.
Q. Students go on trips for a variety of extra-curricular activities that do not involve drug testing, wouldn't you agree?

[68] (481)

A. Yes.
Q. For instance, the Beta Club has gone to conventions, right?
A. Right.
Q. And classes go on field trips, right?
A. Yes.
Q. Students even visit prisons as a field trip, right?
A. Yes.
Q. And for those activities the students are not subjected to the drug test; is that correct?
A. That's correct.
Q. In terms of classroom activities and I'm not talking about competitions here, I'm talking about activities during the school day in the classroom, there are some classes that involved welding, correct?
A. Yes.
Q. And a student who enrolls in that class is not subjected to drug testing because of being in that class, are they?
A. They would be because they are in FFA.
Q. Is it possible for the student to say I don't want to do the FFA activity; I just want to do the class?

[69] (482)

A. That is part of the FFA. Those teachers that do the FFA, the agriculture, they are and so you become a member of the FFA.

Q. So for those students who are a part of the FFA, they are subject to this drug testing policy?

A. Yes.

Q. You're sure about that?

A. I understand that all FFA members that it is an elective subject, they do have competitions. They may not have in the welding, but they have in the past. And I don't know what their plans are for this year. But, yes, I would say yes, they would be tested.

Q. When you say they would be testing, you are talking about the students who enroll in the FFA close would be drug tested?

A. Yes.

[70] (122)

Q. Okay. Now you say that it did come up, the subject of drug testing did come up from time to time. Since 1995 you have been on the school board; is that right?

A. 94-95, yes.

[71] (123)

Q. 94-95. And it's come up a number of times—

A. Yes.

Q. —since 94-95 during school board meetings?

A. We have talked about it periodically as new business. It was never on the agenda, but we have discussed it as new business at different times.

Q. Would you say it's come up at least once every year since you have been on the board?

A. Yes.

Q. Even more frequently than that, do you think?

A. The last two years, the year before we implemented it and the implementation of it last year, yes.

People—we were considering it more often than what we had in the past. And people all around the community were becoming more aware and opening up to the fact that we had a drug problem.

A. Yes.

Q. Okay. Can you think of any other tools that the school has for addressing drug issues?

A. We have the drug free program. We try

[72] (485)

Q. Okay. Well, let's just take the first say three years that you were on school board. And you were describing the issue of drug testing coming up from time to time. Why did the school board not go ahead and pass a drug testing policy during that period?

A. Because some of the school board members didn't think we had that much of a problem. But if you speak to them today they will tell yes, we do.

* * * *

[77] (489)

Q. Now was there a time when the conversation about drug testing shifted from one that was just sort of general comments not on the agenda to the board getting serious about a drug testing policy?

A. Yes. I think the spring of '98, I'm going back in my mind. The spring of '98 we had talked about it.

We felt—several parents had called, several parents in the grocery store had talked to [78] (124) me about it, even some grandparents had talked to me about it, that they felt like it was getting worse. And so even in the spring we were, you know, were more conscious that more people were waking up to the fact that we had a drug problem.

Q. So it was during the spring of 1998 that the board started to focus on possibly putting together a drug testing policy?

A. Uh-huh. Yes.

Q. And was there a particular meeting or a particular moment when somebody formally said let's go ahead with this, let's more forward with the drug testing?

A. I think we just felt that it was something that we needed. And then in the fall was when some of the parents started talking about it. But I think we had already talked about it and, you know, knew we needed something because the people were stopping us, not only me, but other people and people were calling the board members, you know, about the drug situation. And then, of course, there was the time that Kay came to the school board.

Q. Who is Kay?

A. DeSomer. She's a parent.

[79] (491)

Q. Tell me about Mrs. DeSomer coming to the school board.

A. Well, she first called me at home and told me that they were having a problem with her son and that they were trying to handle it. But she felt like we needed to know that there were others that was taking drugs. And she said that, you know, she felt like something needed to be done because the other parents she said didn't—you know, they didn't want to hear that their child was taking drugs. And so I just advised her to call the school board, get on the agenda, you know. That's the only way you are going to get it in front of the board is to put it on the agenda, and she did so and she came to the meeting and presented it. But at this time we had already been talking about drug testing. And then we had a community meeting where we invited the community in to talk, you know, to tell them what we planned to do. Did they have any input they wanted to put in or do they have any

objection to, you know, drug testing. We gave them the opportunity to be able to participate in our writing up the drug

* * * *

[82] (492)

A. My granddaughter coming home and telling me that so and so came back to class and he was bombed out and even the teacher asked him if he was okay. It was obvious to the students and to the teacher that something was wrong with him. Then I had a student call me and tell me that some boys were passing around a marijuana cigarette in her English class. And I asked no names or anything because if you start pushing they don't tell you anything.

Q. Well, it certainly sounds like that during, you know, the first part of 1998 on into the summer there were a lot of things going on that were prompting you to move towards doing this policy. And part of what I need to do is to try to, you know, get a list of those things and really nail it down so let me go through them, okay?

A. Okay.

Q. You got a call from a student concerning a marijuana cigarette being passed around in class. That's one thing, right?

A. Yes.

Q. Your granddaughter told you about a student being, in your words, bombed, right?

A. Yes.

[83] (493)

Q. That's a second thing.

Ms. DeSomer called you with concern about drug use in the school?

A. Yes.

Q. And she ended up also testifying at the school board, so that would be a third thing?

A. Yes.

Q. There were conversations you had in the supermarket?

A. Yes.

Q. Can you help me get a sense of how many conversations those were or tell me the ones you remember. And, again, I want to keep you in the time frame of say between January 1st, 1998, and when the school actually implemented the policy.

A. Oh, probably five during the spring and the summer. The supermarket is a place where you see people you don't see every day and it takes you an hour and a half to get in and out.

Q. That's the social center of most towns, I know that. And were those five conversations or those approximately five conversations, were those all the same thing or can you tell me how they might have been different if they are different?

[84] (494)

A. One of them was with a clerk. Her daughter had skipped school and gone to her boyfriend's. And she made the statement that she knew they were smoking pot and she was very upset that her daughter had skipped school and that something needed to be done.

Q. Okay.

A. That's one in particular because the daughter came in about 15 minutes later and was very belligerent, just flung herself in front of some people between me and the people that were waiting, and very unrespectful to her mother. Wanting to know who she was talking to and why was she talking about her and things like that, and I just turned around and told her she's talking to me.

Q. Okay. That's one of the conversations. Can you remember any of the others?

A. Yes. They come up and they start, you're are doing a good job, but so and so teacher down there, you know, and they go on and then they would end up getting into the drug

problem. They would list several things that they weren't happy with and then they would end up saying, and I think we need to do something about the kids in the park smoking pot and things like

* * * *

[95] (495)

Q. Do you recall who first mentioned that the policy might ought to include people other than just the athletes?

A. Me.

[96] (496)

Q. Tell me as best you can what you said in that school board meeting.

A. I just said I didn't think it was fair just to test the athletes when you have other people out there in competition representing our school.

Q. And what response did other people make to that comment?

A. We had a discussion about it, about the ones that were competitive, and we asked him to implement that into it.

Q. Okay. That discussion you had, can you remember what any other individual board member said?

A. They all started naming off different organizations because each one of us has a different organization that's our pet and, you know, things like that.

Q. So when you first said I think we ought to include the non-athletes who do competition, did anybody disagree with that?

A. No.

Q. Did anybody even express any reservations or questions about it or there was immediate agreement by all people that that should be done?

[97] (497)

A. It was—like I said, we discussed it and they felt like that it was a good thing and that we went ahead and asked him to implement that into it.

Q. Now you said everybody proposed different activities and you proposed FFA as an activity, right?

A. Yes.

Q. Were there any others that you proposed?

A. Band.

Q. Band. And why is that one that was, you know, in your mind?

A. Because that's what my kids were active in.

Q. Okay. And you were in the Band Boosters also, right?

A. I was in the Band Boosters, I was in FFA Boosters, still am. I was in the athletic booster clubs.

Q. Right. Of course, the athletes were already included?

A. Yes.

* * * *

[100] (498)

Q. Okay. Now this issue of drug testing all the students did come up at some point in a board meeting, didn't it?

A. As a gesture, but we knew we couldn't.

Q. How did you know that?

A. Just knowing that it's mandate for them to go to school. They have to go, but they don't have to be in extra activities.

Q. Okay. Do you remember when that discussion took place where people, you know, brought it up as something they would like to do?

A. I don't know what the others did. I was the one that made the statement.

Q. Do you remember which meeting you made it in?

A. No, I don't.

* * * *

[103] (499)

Q. And you knew when this policy was being discussed that you—that the school could drug test the athletes, right?

A. Yes.

Q. And you wanted to add others to that list to the extent that it would be permissible to do so, right?

A. Correct.

Q. Now you draw the line at competitions at 1including in the policy non-athletic extra-curricular competitions because you believed that this would be legally permissible, right?

A. Yes.

* * * *

[105] (500)

Q. Do you think it also sends a message to the community that Tecumseh School District will not tolerate drug use?

A. I hope so.

Q. That's also part of the purpose is to send a message to the community about the school's tough on drug stance; is that right?

A. Yes.

* * * *

[138] (126)

A. There was the incident of the car or hearse whichever you want to call it coming to and parking at lunch hour and all the kids flocking around and there was money passed and things like that.

Q. When was that?

A. That was in '74. '73 or '74.

Q. And it was never established whether drugs were involved there but it was suspicious because of the children flocking to it and money being passed back and forth?

A. Right.

Q. Okay.

A. Okay. There was the football team my son played on, one of his friends had left a bag at my house and it had paraphernalia and stuff in it.

Q. And when was that?

A. That would be '78.

Q. Where there drugs in the bag?

A. No. Just the paraphernalia, a roach [139] (127) that you use to smoke the marijuana and some stuff like that and I called his mother and told her.

Q. What was the other paraphernalia besides the clip?

A. The thing that he—the drug, you know, and then there was a pipe in there. There wasn't any gym clothes or anything.

Q. Okay.

A. It was just paraphernalia.

Q. And was this paraphernalia used to consume marijuana, in your opinion?

A. Marijuana, LSD, or crack or . . .

Q. And how is LSD consumed?

A. Well, I don't know that it was, but he had the spoon that they heated the crack.

Q. Okay.

A. They had this stuffed in the bag.

Q. This was 1978?

A. Uh-huh.

Q. Okay. What's the next incident you can think of?

A. That is going back a ways. There were parties that the boys went to that there was marijuana smoked.

Q. When you say the boys, you are referring [140] (128) to your son?

A. My son and his friends, yes.

Q. Okay. And how do you know that there was marijuana smoked there?

A. Because my son told me.

Q. Okay. And did he see them or he smelled it? How did he know?

A. He smoked it.

Q. He smoked it him, okay. And when did that happen?

A. That was in—I guess his junior year. It would be '79.

Q. Okay.

A. There's been incidents where they have stopped the kids and found marijuana cigarettes or a bag of marijuana, that's the police reports.

Q. Okay.

A. There have been—

Q. Wait just a second.

A. Okay.

Q. If you can, please, refer to specific ones that you remember of, you know, when you have read a police report of a Tecumseh student being found to have drugs.

A. One of the boys that ran with my son was [141] (129) stopped and he had some marijuana.

Q. When was that?

A. That was probably the year they were—probably '80.

Q. Okay.

A. They also found some marijuana and I don't know exactly in year wise what this is. One of the meter readers from the gas company found some marijuana rolled up down at what is the junior high now and stuck up in a little crack up under the pipes where the meter is.

Q. Can you give me a range of what dates that might have been, what decade you're talking about?

A. Well, this would probably be somewhere in the middle '80s.

Q. And you say now it's the junior high. What was it then?

A. It was—it was the mid high then, too.

Q. Okay.

A. But the high school used to be there so I'm trying to think in relation to who is where when.

Q. Okay. So sometime during the '80s a gas company meter reader found rolled up marijuana at [142] (130) the junior high school?

A. I would around '85, '86, somewhere in there.

Q. Do you know how much marijuana it was?

A. It was a sandwich bag with about a third filled, he said.

Q. Who said that?

A. The guy that was trying to read the meter.

Q. You know about this from a newspaper account or a conversation?

A. No. I know this from him.

Q. Okay.

A. And I don't know whether he reported it 15 to anyone or anything. He just came in. So let me see, that takes me through—now the incidences where the kids weren't actually in school but were using during school after they got out, there's—

Q. Well, hold on. For now I want you to limit incidents involving people who actually are students.

A. Okay.

Q. Not necessarily just in school, but while they're students as opposed to—

[143] (131)

A. Okay.

Q. —somebody who, you know, was a student 10 years ago and later on they went on to get involved with drugs, okay? So staying on the list of incidents involving drugs and individuals who were at that time students in Tecumseh schools.

A. Okay.

(Discussion off the record)

A. In the '80s I'm not as aware of students. My grandson did tell about one having beer in his pickup, one having a marijuana cigarette at school, but I don't have as much recognition in the '80s because my grandson had a very limited contact with those students.

Q. Okay. Let me just make sure I do. The two incidents you do know of though is that your grandson told you that he heard of or saw?

A. He saw the beer.

Q. Okay. He saw a student having beer in the pickup truck and he heard of or saw one student having a marijuana cigarette at school. Did he hear about or see it?

A. He saw it.

Q. Okay. So there's those two incidents?

[144] (132)

A. Yes.

Q. Okay.

A. And let's see, okay. So that gets me through the '80s because he—then in the '90s he had the—he was at a party.

Q. He?

A. My grandson—

Q. Okay.

A. —was at a party with his girlfriend and his friends and the friend's girlfriend found her mother's stash and they started passing it out and him and his girlfriend left.

Q. When was this, approximately?

A. '91, somewhere in there. It was before he graduated.

Q. And when you refer to a stash, you mean marijuana?

A. Yes.

Q. Did your grandson report how much marijuana there was?

A. He didn't say.

Q. Did he report how many students he saw using the marijuana?

A. He didn't say.

Q. Okay. Any more?

[145] (133)

A. No. Just that when they tell me things like this I really don't question them close because they'll quit telling me things.

Q. And what I mean are there any more incidents?

A. Oh, let me see.

BY MS. MEOLI: Any more instances.

BY THE WITNESS: Oh, let me see.

I can't right off hand think of anything other than the girl that called and told me that they were passing a marijuana cigarette around in the classroom.

BY MR. BOYD:

Q. And that was in 1998, right?

A. The 97-98 school year.

Q. Okay. Does that complete the list of incidents that you recall in which Tecumseh school students were using drugs?

A. I heard a conversation with one of the boys that was in FFA. And he was inviting some boys to a party and he said, I'll have plenty of smoke, which meant marijuana.

Q. Okay. I'm sorry. Tell me that again,

A. I heard it.

Q. You heard—

[146] (134)

A. I heard—

Q. —it.

A. —the conversation. He was inviting some boys to his home for a party.

Q. This was during an FFA activity or what's the context?

A. It was—they were there getting ready getting their animals ready to show at our local show.

Q. Uh-huh. Okay. And the student invited—tell me again in your words what the student advised.

A. He invited some boys that were standing there with him to come to his house for a party and that there would be plenty of smokes.

Q. Did he say anything else to indicate that there would be drugs there?

A. No.

Q. And when did that happen?

A. The 97-98 school year.

Q. Okay. So let me ask again, does that complete the list of all incidents that you're aware of in which a Tecumseh school student was involved with drugs?

A. Except the one I told you about my [147] (135) granddaughter saying the boy was bombed out and the teacher asking him if he was all right.

Q. Okay. When did that take place?

A. The 97-98 school year.

Q. Does that complete the list of incidents that you know of in which a Tecumseh student consumed or possessed illegal drugs?

A. Yes.

BY MS. MEOLI: Other than what she has already testified to?

BY MR. BOYD: Is that an objection?

BY MS. MEOLI: Yes. Or I would like to clarify your question. Let me clarify your question. The list that she gave you right now, is that the question that you're asking?

BY MR. BOYD: My question is the list that she has given me during this sequence of questioning, does that complete the list of incidents involving—well, I think my question has been asked and answered.

BY MS. MEOLI: Okay.

BY MR. BOYD:

Q. Do you have any responsibility as a

* * * *

[153] (535)

Q. And the students who get scholarships to Ag. schools, would they be able to get those scholarships if they stayed away from the competitions?

A. I don't know that they get the scholarships, but they would not be denied the education from the colleges if they applied.

* * * *

CROSS EXAMINATION BY MS. MEOLI

[170] (136)

Q. Ms. Rogers, first Mr. Boyd asked you about all your knowledge of drug use. And in the morning hours of the deposition you had made a statement about your daughter having a locker room—I mean, having a locker with a friend of hers whose boyfriend was a drug dealer?

A. Yes.

Q. Is that one of the knowledgeable instances of drug use that you knew of in the school district?

A. Yes.

Q. Okay. You also earlier on in the deposition talked about a student who was arrested in the FFA for having marijuana in a car.

A. I don't know that he was in FFA, the one that had the marijuana in the car. Now, the one that had the paraphernalia.

Q. Okay. And which instance was that? Is That—I'm sorry.

A. Okay. Go ahead.

Q. Is that one of the instances that you listed for Mr. Boyd?

A. No.

Q. Okay. Why don't you explain that instance us to.

[171] (137)

A. The one that—

Q. I'm sorry. Go ahead.

A. The one that had the marijuana found in the car?

Q. Yes.

A. Okay. They come back from lunch, the students had, and the drug dog was brought in. There was no suspicion or anything at that time. This was just a regular routine drug dog. And the dog hit on this car and there was marijuana in it.

Q. And when was that, if you remember?

A. 97-98 school year.

Q. Okay. Did you also mention an instance this morning about a student that had marijuana that was in the FFA?

A. That had what? I'm sorry.

Q. Marijuana that was in the FFA.

A. There was one that had the paraphernalia in his car.

Q. Would you tell us about that instance.

A. Well, they picked him up for speeding or something and when they got to searching, well, there was paraphernalia in the car and like that. Now I don't know that there was drugs, but there was the things to use drugs.

[172] (138)

Q. And when was that, if you can remember?

A. That was I would say March or April of this spring. It would be '99.

Q. Okay. That was 1999?

A. Uh-huh.

Q. Okay. Have you ever chaperoned any dances where marijuana was found?

A. Yes.

Q. And how many times did that occur?

A. It occurred one time.

Q. Can you give us, if you can, a year or an approximation of when that would have happened?

A. 1975.

Q. You mentioned your son at one point and a friend.

A. Yes.

Q. You had personal knowledge of marijuana use through your son?

A. Yes.
Q. And his friend?
A. Yes.
Q. Any other type of drugs that were used by your son and his friend while he was at Tecumseh?
A. I found out later that there were Quaaludes.

* * * *

RE-DIRECT EXAMINATION BY MR. BOYD:

[216] (139)

When you were talking with Ms. Meoli earlier you said that there was a drug problem in the 1970s and that there is a drug problem today. Do you remember saying that?
A. Yes.
Q. Could you define for me what you mean by a drug problem.
A. Yes. There are kids out there that are taking drugs. We have second generations taking drugs that stem from the ones in the '70s that are—now their kids are taking drugs. And by the actions and the word around, the things that have happened down in the park that people that live there close have observed, some of the things that the police have observed, we do have a drug problem.

* * * *

[245] (562)

Q. When you refer to the drug problem at Tecumseh you mentioned it in the 1970s and the 1990s, would you say that the drug problem has remained steadily present throughout the 1970s, '80s and 1990s?
A. Yes.

* * * *

[256] (564)

The students who tend to be involved in drugs, are they also the ones most likely to be choosing extra-curricular activities?

A. Yes, they do.
Q. Yes, they do or yes, they are the ones—the students who are involved in drugs are the ones that are most likely to go into extra-curricular activities, in your opinion?
A. No. You said most likely.
Q. Okay. Well, I'm sorry. Why don't you tell me—put this in your own words, please.
A. We have students that are on drugs, use alcohol, and they are in extra-curricular activities. There are probably more that are not in activities.

* * * *

DEPOSITION OF JAMES BLUE,
taken on behalf of the Plaintiffs, October 25, 1999
at Norman, Oklahoma.

DIRECT EXAMINATION BY MR. BOYD:

[38] (578)

Q. Okay. How was the bag—well, first, let me just ask you this. Is it true that the marijuana was found just in the parking lot?
A. Okay. I'm confusing two incidents in my mind. There was never a bag as such found. You kept referring to a bag of marijuana?
Q. Well, that's what Mr. Jacobs told me.
A. Okay.
Q. But you can set me straight.
A. Okay. We found—there were three marijuana joints found beside a log that marks a parking area, utility poles that are laid over. There were three marijuana joints found at that log tucked underneath.
Q. And this was around the beginning of 1998?

BY MS. MEOLI: I'm sorry. In the beginning of the calander year or the school year?

BY MR. BOYD: Yes. Around the beginning of the calander year of 1998.

BY MS. MEOLI: The calendar year, okay.

[39] (579)

BY THE WITNESS: Okay. Yes. It was in that spring term, yes.

BY MR. BOYD:

Q. Okay. And were those three marijuana cigarettes ever tied to a particular student?

A. Those were not.

Q. And I take it no students were disciplined because of that incident?

A. No.

Q. No, they were not disciplined?

A. They were not.

Q. How were they found, the marijuana cigarettes?

A. With the Dogs Against Drug, the canine came around and visits the school regularly and does parking area searches, in the building searches, locker searches.

Q. Okay. And you told me that this log, this telephone pole marked the boundary of the parking lot; is that right?

A. Yes, one of the boundaries.

Q. Okay. Was this a boundary that abuts the street or not?

A. No. It abuts the baseball field.

Q. Okay. Is the parking lot itself fenced [40] (580) off?

A. No, it is not.

Q. So a member of the public could certainly pass through there?

A. Certainly.

Q. Now you said you had in mind another incident, too, that you were perhaps confusing this with. Tell me what that other incident was.

A. We did have the dog also hit on a car, a vehicle, and it did have a small amount of marijuana in it.

Q. Okay.

A. That student was subsequently disciplined.

Q. Where these two incidents on the same day, the same drug dog?

A. No. They were not on the same day. There were not in the same month to my knowledge.

Q. But they were both in the spring of 1998?

A. Yes.

Q. Okay.

A. Maybe they weren't. I don't know.

* * * *

[56] (####)

Q. And if she reports to you interest in a particular student what do you then do?

A. We normally will bring the student in and interview the student, assess the situation ourselves, send this referral home to parents.

Q. Okay. I want you to be more specific. In interviewing a student what do you ask?

A. First of all we can tell ourselves if the odor is strong, okay? We will ask where he's been, what he has been doing, has he been involved in activities that might lead to the drug dog hitting upon him, where he was at lunch.

Q. How long does such an interview typically take?

A. Five to 10 minutes at the most.

Q. And am I correct in understanding that you make some kind of judgment call about whether or not you're suspicious of that student being involved with drugs based on the interview, the smell, the appearance of the student; is that right?

A. Correct.

* * * *

CROSS-EXAMINATION BY MS. MEOLI

[170] (616)

Q. Let me go back to this policy a second.

The activities that are under this policy, is there some kind of a connection that all of them have together?

A. Yes. They're under the OSSAA for the most part. They're under eligibility criteria for competition.

Q. Okay. Are there any other activities in the Tecumseh High School that are regulated by the OSSAA with regard to their eligibility?

A. Only if you don't have enough grades for the year. Then we just impose. I don't know if the OSSAA imposes any, but we impose a six-week ineligibility period for those that have not passed.

Q. Ineligibility for what?

A. It could be anything.

Q. For anything?

A. Uh-huh, any activity. Mainly their activities associated with the OSSAA though.

Q. I don't understand.

A. Okay. You're going to be a participant and you're going to miss school, then you will be [171] (617) ineligible to go if you are not passing your classes. Our eligibility really is ran for everybody.

Q. Okay. They would be not eligible to go where?

A. Anything that takes them away from a class.

Q. So you mean for a field trip or is that what you're talking about?

A. It could be field trip.

Q. It could be a field trip?

A. Right.

Q. And that happens at the beginning of the school year?

A. Yes.

Q. Okay. My question to you was, is there any other activity in Tecumseh High School that is covered by the OSSAA rules and regulations?

A. No. There are not, no.

Q. Is it your understanding that if an activity becomes eligible for the OSSAA regulations that that—it would then be covered under this policy?

A. Yes. That's my understanding.

* * * *

RE-DIRECT EXAMINATION BY MR. BOYD

[181] (621)

Q. Do you remember we talked about a student who did test positive last year and who was on the wrestling team, right? Do you remember that?

A. Yes.

Q. Now in the student handbook there are listed two sponsors for the wrestling team. Does that remain for—rather was that true last year that there were two coaches?

A. Right.

Q. So in terms of who would have a need to know about the test results it would actually be both of them, right?

[182] (622)

A. The coaches, yes.

Q. Both coaches?

A. Yes.

Q. How many coaches are there for the football team?

A. Five to six.

Q. And how many sponsors are there for FFA?

A. Three.

Q. And would you disagree with me if I showed you from page 5 of the student handbook from last year there actually were seven football coaches listed?

A. No. There could be seven.

Q. Okay. So a student who was in FFA and on the football team who tested positive, the people who would have a need to know the test results would be the three FFA

sponsors, the seven football coaches, yourself, and then obviously the superintendent and assistant superintendent, they would all end up knowing the test results; is that right?

A. The assistant superintendent would. I don't know about the superintendent. And the need to know is the head coach.

Q. Well, you told me that both of the [183] (623) wrestling coaches found out, right?

A. They probably did, yes.

Q. So there's no reason to think that the football coaches wouldn't all find out also, right?

A. They could.

* * * *

[185] (1028)

Now, national studies show that band, vocal and other non-athletic, extra-curricular activity students, they are the least likely of all students to use drugs. Would you agree that this same—that the same thing would hold true for Tecumseh High School students?

A. No, I would not.

Q. What's the basis for you saying that?

A. I have no basis for saying yes or no.

Q. Okay. So you really don't know?

A. I just know all age levels, all categories as we—if we're categorizing the students all frequent the park. You see, that is on the direct path to the lunch facilities, restaurants, and so forth so they all go through there.

* * * *

DEPOSITION OF GRANT GOWER,
taken on behalf of the Plaintiffs, October 26, 1999,
at Tecumseh, Oklahoma

DIRECT EXAMINATION BY MR. BOYD:

[9] (656)

Q. Okay. Mr. Blue said that one student tested positive during the current school year. Do you remember right at the beginning of the year there was the testing for a number of people and it ended up not being completed?

A. Yes.

Q. And he said that one student tested positive this year; is that correct?

A. That is correct.

Q. And there was only one student?

A. Yes.

Q. What was the substance that student tested positive for?

A. Marijuana, I believe.

Q. Do you have any doubt about that?

A. That was what the report came back as.

Q. Okay. What activity did that student do that caused him to be drug tested in the first [10] (657) place?

A. Softball.

Q. And was that the only activity that caused him to be drug tested?

A. To my knowledge, that's all I know is that she was a fast pitch softball player.

* * * *

DEPOSITION OF LINDSAY EARLS,
taken on behalf of the Defendants, on September 26, 1999,
at Oklahoma City, Oklahoma.

DIRECT EXAMINATION BY MS. MEOLI

[25] (178)

Q. That's fine. I also, Lindsay, saw you on Good Morning America either the day of or the day after the lawsuit was filed. In that program, Charlie Gibson asked you if there was a drug problem in Tecumseh, and you said yes.

[26] (179)

And then he asked you if the drug problem was widespread, and you said yes. Do you remember making those statements to Charlie Gibson?

A. Yes, I do.

Q. Were those two statements, the statements to the Shawnee News Star and the statements that you made to Charlie Gibson on Good Morning America, correct?

A. Yes.

MR. BOYD: Hold on. Let me just ask a question. That's a very vague question, Are they correct? Did she say those things, or does she agree with their content?

MS. MEOLI: Does she agree with their content?

THE WITNESS: Oh. Well, at that time, I guess I did. Now I'm not so sure. Now I have thought about this, and I've never seen anyone doing drugs, engaging in drug use, at school or anywhere else. And I'm not sure how true those statements are.

* * * *

[29] (180)

Q. Well, you said you based your belief on the discussions you have with your friends, that there is not a widespread drug problem in Tecumseh. And what I'm asking you is: What were those discussions that you had with your

friends to base your opinion that there isn't a widespread drug problem in Tecumseh?

A. I haven't said that there isn't a widespread. I'm not sure if there is or not.

Q. Okay. That's fair. So is your testimony that you do not know whether or not there is a widespread drug problem in Tecumseh?

A. Yes.

Q. And is your testimony that you do not know whether kids in extracurricular activities do drugs or not?

A. Yes.

* * * *

[37] (185)

Q. Have you ever gone on any overnight trips with the choir?

A. Yes.

Q. Have you ever slept over in hotels with the choir members?

A. We slept in the Salvation Army place in Enid. It wasn't a hotel, but we slept over.

Q. How many kids were—You don't have to give me an exact number, but about how many kids slept in the Salvation Army with you?

A. I don't know. It was all the choir and all the band my freshman year. I don't know how many kids there were.

Q. What were the sleeping arrangements there?

A. The girls were in one room and the boys were in another.

Q. So all the girls slept together in one year and all the boys slept together in another room?

A. Yes.

Q. Was it like a slumber party?

A. Yeah.

Q. What kind of restroom facilities did they have in the Salvation Army?

A. I think there were two for the girls and two [38] (186) for the boys.

Q. Now, two, do you mean two stalls in a restroom or two restrooms?

A. There was one restroom with stalls and then one with a bathtub for the girls. I don't know about the boys' bathroom arrangements.

Q. Okay. So one of the rooms just had a bathtub in it?

A. It had a bathtub and a sink, I think.

Q. A bathtub and a sink. And then the other room had bathroom stalls?

A. Yeah.

Q. Do you remember how many stalls were in that bathroom?

A. No.

Q. Were there a number of stalls?

A. I think there were four or five, probably.

Q. And would it be fair to say that there were probably more than 20 girls sleeping in the room together?

A. Oh, yes.

Q. Would it be fair to say more than 40?

A. Probably close to 40 or 50.

Q. Tell me how all those girls handled the restroom facilities that night, Lindsay.

[39] (187)

A. Probably all of them.

Q. I'm sorry. That question was a little awkward. Were there a lot of girls in the restroom at one time?

A. Yes.

Q. Were there dressing rooms, private dressing rooms where you dressed and undressed for bed?

A. We got dressed in either the bathroom or in our room where we slept.

Q. And in your room is in the room with the other more than 20 girls?

A. Yes.

Q. And when you got undressed to go to bed, in either the restroom or in the room where you slept with the other girls, there were other girls there?

A. Yes.

Q. Did that embarrass you?

A. No.

Q. How about with the Academic Team, have you gone on any trips recently with the Academic Team?

A. Yes.

Q. Where did you go?

A. We went to Chicago.

Q. And when did you go to Chicago?

[40] (188)

A. In May.

Q. May of this year?

A. Yes.

Q. How many kids went up to Chicago with the Academic Team?

A. There were five of us.

Q. Was it an overnight trip?

A. Yeah.

Q. What were the sleeping arrangements—

A. We stayed in college dormitories.

Q. What college?

A. Lake Forest.

Q. Lake Forest?

A. Yes.

Q. That's a coincidence.

A. Yeah.

Q. How many—Well, were all of the kids on the Academic Team one gender?

A. No.

Q. Did all the girls stay together?

A. There was only one of me.

Q. Okay. So I gather all the boys stayed together?

A. Yes, they did.
Q. Did you have your own private room?

[41] (189)

A. I shared a room with a girl from another school.
Q. And she was on the Academic Team for the other school?
A. Yes.
Q. Had you ever met her before?
A. No.
Q. Did you both sleep in the same room?
A. No.
Q. What was—You said you shared a room with another girl.
A. Well, there were two girls hooked together, like a dorm, and she slept in one and I slept in the other, because there were only two of us.
Q. So there was one sleeping room attached to a second sleeping room?
A. Yes.
Q. And where was the restroom?
A. Between the sleeping rooms.
Q. Between the sleeping rooms. So both of you shared the same bathroom?
A. Yes.
Q. How about any other trips with the Academic Team?
A. Not where we stayed overnight.

[42] (190)

Q. How about any other trips with the choir where you stayed overnight?
A. I don't think so.
Q. How about band?
A. This is my first year and we haven't yet. I don't know if we will, but we haven't.

Q. Are there any other extracurricular activities which allowed you to go to another city and sleep over?
A. No.
Q. How long were you up in Chicago?
A. Four days, I think.
Q. Four days?
A. Maybe five.
Q. And there were five team members?
A. Yes.
Q. How many adults went with you?
A. Three.
Q. And who were those?
A. Ms. Warwick and her husband, and one of the kid's grandpa came with us.
Q. Okay. Did you have any free time when you were up in Chicago?
A. Uh-huh. Yes. Sorry.
Q. That's all right.

[43] (191)

What did you do?
A. We toured the city, and we studied some. We practiced.
Q. When you toured the city, how did you physically tour it? Did you walk? Did you take the bus?
A. We walked, and we drove some. We had a rental car and we drove.
Q. Who drove the car?
A. Mr. Warwick.
Q. When you were sleeping in the dorm with the other girl from the Academic Team, where were Mr. And Mrs. Warwick and grandpa staying?
A. Grandpa stayed with the boys. He stayed with the boys next-door to our guys, because there were only three in there, and there were four of our guys, so he slept with them.

And Mr. and Mrs. Warwick had a room. They had a separate hall for married coaches, and they stayed there.

Q. Was that anywhere close? Where Mr. And Mrs. Warwick were staying, how close in proximity was that to where you were staying?

A. They were in three different buildings, but the buildings were really close together.

[44] (192)

Q. Who was supervising that dormitory while you were there?

A. There were some coaches from another school sleeping on that floor with us.

Q. Did you have a curfew?

A. Yeah, I believe so.

Q. Do you remember what the curfew was?

A. I think it was either 11 or midnight.

Q. And was the curfew that you had to be back in your dormitory room by 11 or midnight?

A. Yes. Unless you were out with your sponsor.

Q. Did you go out without your sponsor in Chicago?

A. We—We did some things without our sponsor, but she knew where we were when we were doing these things.

Q. Sure. Tell me what you did without your sponsor.

A. One day—One evening, we walked into town, into Lake Forest. We walked to a store and got some ice. And then another day, some of us rode, and we went to Chicago, we went into the city, and then we came back.

* * * *

DEPOSITION OF SHEILA EVANS,
taken on behalf of the Plaintiffs, on October 25, 1999
at Tecumseh, Oklahoma.

CROSS-EXAMINATION BY MS. MEOLI:

[39] (199)

Q. Ms. Evans, you said Tecumseh has a alcohol problem. Is it your opinion that they have a drug problem as well?

A. I believe so.

Q. Have you overheard any students talking about the use of drugs in say the last five years?

A. Yes.

Q. Has it changed in any way from say the last—from the last 10 years to the last five years?

A. I believe it has. As well as being a teacher and a parent and my two children are both in [40] (200) college now, sophomore and senior and they've gone to the Tecumseh School system and having both a boy and a girl from a parent's point of view, you know, I've known kids of both sexes and that and it seemed like that since my son graduated in 1996 and I was class sponsor of both his class and my daughter's class, which is the class of '96 and '98. And it has seemed that there is more of a problem I noticed with kids that I knew in my daughter's class and, of course, and certainly not all kids, but the ones that—than more of a general problem than I thought it had been in my son's class in that two-year time span.

Q. Okay. Do you find them talking about it more freely now than they did before?

A. It amazes me that the kids will talk about use of marijuana quite freely in class so much that I have classes that—sometimes my Foundations for Living I classes will have freshman through seniors in there because, you know, it's an elective, any can enroll in it. You might have seniors who have not had the class, but a lot of freshman take it, too, so I have all four age levels. And particularly the upper class

who are [41] (210) seniors who will talk about it so freely that I have asked them, please, do not talk about that in my class. Whether you guys want to role models or not—especially I have a lot of 9th grade girls and the guys who will talk about it and if they're a role model and they hear that stuff I don't want them to hear it in my class, talk about it someplace else if you must but, you know, I don't want that talked about here.

Q. Okay. Can you sit here right now and tell us those students that were talking whether they wanted to compete in the FHA or if they were in just in your extra-curricular classes?

A. I have never heard a student that was going to compete talk about it.

Q. Okay.

A. The ones that I have heard talk about it and, you know, I can picture kids, of course, you know, with no names but are basically kids that I don't think would have had any desire to compete, maybe some of them you will, you know, will but I don't see and they have never expressed a desire to me.

* * * *

DEPOSITION OF DANNY STERLING,
taken on behalf of the Plaintiffs, on October 26, 1999,
at Tecumseh, Oklahoma.

DIRECT EXAMINATION BY MR. BOYD:

[24] (691)

A. Both. They have the opportunity to listen to motivational speakers. They get to sit in on the business sessions that the students—they're conducted by the delegates, obviously. And then there is also leadership work shops that they are attending. Some of the students are competing in some activities there because that's kind of like

the state finals and some of the, you know, the various divisions.

Q. Okay. Go on to the next activity then, please.

A. Okay. We have monthly FFA meetings where the students come, you know, they discuss various types of activities they're planning for the month. And, you know, if the students attend that meeting they get extra credit. We sell sausage, you know, for a fund-raiser. For being involved in that, you know, they get extra credit because we are a non-profit organization; therefore, you know, we're self-financed. Oh, let's see. The speech contest, you know, if they compete in a speech contest they get extra credit.

[25] (692)

Q. This is a contest with other schools?

A. Yes, sir.

* * * *

[27] (693)

Q. Let me ask you this. When the student is doing hands-on work with an animal as part of the project, it could be a very young animal or it could be a fully mature animal; is that right?

A. Yes.

Q. And that would include a large full-size steer, for instance, that the student could be handling?

A. Yes.

* * * *

[31] (697)

Q. So, for instance, the student you mentioned who is doing the floriculture culture competition or the national FFA that you are about to go to, if she were still a student and did not take the drug test she could not do that, right?

A. Right.

Q. Okay. Couldn't even do an essay competition?

[32] (698)

A. That contest is not structured that way.
Q. Are there any contest that involve essay writing?
A. Competitive contests?
Q. Uh-huh.
A. Most of the contests that deal with an essay in the FFA the final result is to give a speech, you know, from that essay or using that essay. So as far as that part of it, again, we're talking FFA activities. We're not talking class because, you know, they can right an essay in class and do not have to give it—in fact, we just finished that. They do not have to give it in a speech in an FFA contest.
Q. Okay. But there are certain contests that involve essay writing and speeches both sort of linked together; is that right?
A. No. Really it's just the speech itself. Of course, the speech is based on, you know, the initial draft essay or whatever you want to call it.
Q. Okay. And that sort of contest is also something a student who did not do the drug test would be prevented from doing; is that right?
A. That's correct.

* * * *

[42] (703)

Is there anything about FFA activities or competitions that would become especially more dangerous if a student were impaired by drugs?
A. Handling livestock, simply having a 1200-pound steer, which is a pretty normal size of some of the animals we show. If a student certainly was not, you know, 100 percent intact to what was—in tune with what was going on, excuse me, that could certainly have an effect on, yes. As far as some of the activities that we are involved with, in the FFA we have to, you know, we have to stay overnight there at the national FFA convention, for example.

[43] (704)

Is it your understanding that a student would be free to go on an overnight FFA trip without taking the drug test just so they did not do the competition?
A. Right. Yes.

* * * *

[57] (712)

Q. What was the basis for your suspecting that the student might be involved with drugs?
A. Listlessness in the class, attitude. One situation I actually smelt the aroma of pot.
Q. Okay. Do you know whether any of those students were ultimately disciplined?
A. No, I don't.

[58] (713)

Q. Okay. Do you think the students in FFA are more or less likely than the sort of general student population to use drugs, illegal drugs?
A. Less.

CROSS-EXAMINATION BY MS. MEOLI:

[71] (718)

Q. Okay. When they are competing in welding are you permitted to have one-on-one supervision of those students?
A. No, ma'am.
Q. Are you allowed anywhere near those students?
A. No. It's a contest site.
Q. Does that differ in any way from when those students are welding in the classroom?
A. Yes, ma'am. We're there in the classroom with them obviously to, you know. Yes, it does.
Q. And why are you supervising those children while they are welding in the classroom?

A. Several reasons. One, the big one, of course, the safety standpoint from the standpoint of watching over them and also grade them on their progress and their end product.

* * * *

[78] (204)

Q. When you responded to Mr. Boyd on these students that you suspected of drugs that you talked to the principal about, were there other students in your classes that—and I'll give the same five years just to try to make it a little easier—that you have suspected of being on drugs or a drug user that you have not talked to the principal about?

A. Yes.

Q. I hate to ask you for an estimate, but would it be—well, first of all, can you give me an approximation of how many?

A. Per year, would that work?

Q. Sure. Sure. Let's say per year.

A. I would say within a year's time I would estimate at least 10 a year.

Q. Okay. How about the—let me take you back prior to the implementation of the drug policy in say October of 1998. Prior to that time had you heard students in your class openly talking about the use of drugs?

A. Would it be fair to ask you if that's drugs and alcohol?

Q. Sure.

A. Yes.

[79] (205)

Q. Okay. Have you heard them talk about Drugs—well, let me limit it to drugs for the time being?

A. Yes.

Q. Okay. Did they—did you sense any kind of a fear or hiding that conversation from you?

A. No.

Q. Did they try and have you enter into the conversations?

A. No.

Q. Did they stop when you walked by?

A. I was sitting at my desk in all those situations basically so, no.

Q. You just overheard?

A. Yes, ma'am.

Q. Would you consider that happening on a frequent basis, an occasional basis, an infrequent basis?

A. Occasional.

* * * *

DEPOSITION OF DANIEL JAMES,
taken on behalf of the Defendants, on September 25, 1999,
at Oklahoma City, Oklahoma.

DIRECT EXAMINATION BY MS. MEOLI:

[27] (1043)

Q. Before I go further, let me go back a second. Has anyone in your immediate family, and I am including your mom, your mom's current husband, your dad, your dad's current wife, or any siblings, ever been arrested for any drug-related or alcohol-related charges?

MR. BOYD: Objection on just clarity. When you say "siblings," do you include half siblings and step-siblings?

MS. MEOLI: Yes. Yes.

THE WITNESS: That I know of for sure, my mother's husband, Ray Hagar.

BY MS. MEOLI:

Q. Do you know what he was arrested for?

A. Yeah. Not the specifics of it.

Q. Was it drug-related?

A. Yes.

Q. Do you know when that happened?

A. Two years ago.

Q. And your mom and Mr. Hagar have been married since April of 1999?

A. Yes.

Q. Has Mr. Hagar lived with your mom prior to that time?

A. Yes.

* * * *

[124] (936)

Q. Why don't you tell me about your knowledge of—You talked a little about the kids that you know that are using drugs that still—that talk to you. What is your knowledge about the kids that you don't know personally? Do you have any knowledge about drug use in Tecumseh?

A. Drug use about the students in Tecumseh?

Q. Yes.

A. Only just the ones that, you know, I talk to. Everybody else, I have absolutely no knowledge of.

Q. About how many kids have you talked to about drug use?

A. About drug use in general, or their?

Q. How about their drug use?

A. Probably around 12.

Q. Do you talk to them about it in school?

A. Yes.

Q. And what kind of things do they tell you about their drug use?

[125] (937)

A. Some of those are my friends, and they'll tell me, you know—just, you know, what they did that weekend, what drugs, or drug, you know, usage they had, and no real specifics or, you know, no great detail of what went on. And they'll talk about how they can't do this because they're going to go out and they're going to do this with their friends,

or that with their friends. You know, I'll go, What are you doing? Oh, we're going to get out and get high. And other people, like I think the—I think like maybe of those 12, like six of them are my friends. The rest of them are just, I mean, acquaintances that I see and I wave at. They're not really my friends, but they just talk to me about they need help with this problem, or this person in their life, you know, and they don't know how to handle it. And they'll come to me for advice. I mean—And they'll talk about their drug use, their past drug use, and they'll want advice on how to help themselves or other people.

* * * *

[218] (200)

Q. Okay. You said you knew that this boy named Jeremy went to drug rehab

A. Yes. To the best of my knowledge, he did.

Q. How many kids in the last year and a half to your knowledge have gone to drug rehab from Tecumseh?

A. Two.

* * * *

[234] (219)

Q. You also talked earlier about having been to two or three parties when students have shown up high, apparently under the influence of drugs. Do you remember testifying that way?

A. Yes.

Q. How many students showed up at these parties seeming to be under the influence of drugs? How many students, in total, are you talking about here?

A. I've physically seen about 12 people, altogether, that attend Tecumseh High School, under the influence of illegal drugs.

Q. Do you remember talking about people who hang out in the park that is to the south of the high school, and that they are the dropouts, the skater, grunge types, and people—

well, the skater, grunge types who come from, as you put it, a lower financial class? You remember talking about that?

A. Yes.

Q. Now, these people who hang out in that park, are they the people who do extracurricular activities?

A. None of them.

* * * *

[237] (220)

Q. Okay. You also talked about people you know, who talk about of this own drug use. And you made a distinction between friends and acquaintances. You have about six friends who have talked about their own drug use, about six acquaintances who have talked about their own drug use. Of all of these people, of all of the students you know who claim to have used drugs, do any of them participate in any form of extracurricular activities, other than that one student who is in the art club?

A. Some of them participate in HOPE, if you call that an extracurricular activity. I'm not sure. A good five or six of them are. Other than that, I don't think so.

* * * *

[269] (221)

Q. Okay. Let's try this again, Daniel. Let's try this again. Who hangs out at the park, Daniel?

A. Lots of people.

Q. Okay. Do you know the kids that hang out at the park that do drugs, and the kids that hang out at the park that don't do drugs?

A. I know the kids that hang out at the park that do drugs. If there are kids that hang out at the park that don't do drugs, I don't know.

DEPOSITION OF CAROLYN DAUGHERTY,
on September 22, 1999, at Norman, Oklahoma.

DIRECT EXAMINATION BY MR. BOYD:

[9] (272)

Q. Would you say that half of the class time is spent preparing for performances?

A. That would be about right.

Q. That would be about right?

[10] (273)

A. Uh-huh.

Q. About half of the time? Do you think it's more than half the time?

A. On occasion. Not every day.

Q. Okay. And overall would you say it's around half or more than half the time is spent preparing for performances?

A. Probably not every day, not half all the time or a good portion of the time.

Q. Okay. So it does vary day to day?

A. Yes, uh-huh.

* * * *

[44] (286)

Have you ever caught a choir member with illegal drugs?

A. I have never caught a chair member, no.

Q. Do you know of any use of illegal drugs by choir members?

A. I have suspected that there have been some, yes.

Q. Well, let's take it one step at a time.

[45] (287)

Have you ever known of any choir members who have used drugs?

A. I have had students tell me so and so, yes, just from what I have heard from another student tell me.

Q. Well, it sounds like you have had suspicions from time to time of choir members using illegal drugs; is that right?

A. Yes, uh-huh.

Q. Tell me the ways in which you—no, let me put that differently. Tell me the reasons that you became suspicious in the past of a particular choir member using drugs.

A. Appearance wise their eyes looked dilated. They looked spaced out, just not right, that type of thing.

Q. What is your basis for thinking those sorts of things might indicate drug use?

A. It has been through workshops that we've had through school that we've had signs to look for in students who we might think they might be using drugs. And some of those signs appeared to me that I felt there might be that problem with that student.

[46] (288)

Q. What are you supposed to do when you suspect a student has used drugs?

A. Refer to the office, the counselor or the principal, speak to them, tell them your concerns.

Q. And how do you know that's what you're supposed to do? Is it written in the policy or did somebody tell you?

A. That I don't know.

Q. Okay.

A. That's what I do.

Q. Okay.

A. Okay. I don't really know.

Q. So you don't know if that's school policy—

A. I don't know.

Q. —that's just what you do?

A. Right.

Q. Okay. We need to try again to not talk at the same time, sorry. It's okay. I do it, too. So let me ask that again.

You don't know whether it's school policy or just your own policy to refer suspected drug using students?

A. Correct.

Q. Have you, in fact, referred or given the [47] (289) names of students who you think are using drugs, have you given those names to somebody at the school?

A. Yes, I have, one that I can recall.

* * * *

[51] (291)

Q. So you think that national trend holds true at Tecumseh High School that what's called the troublemakers tend not to join choir?

A. They tend not to.

Q. The students who use drugs tend not to join the choir?

A. I suppose. I would like to believe that.

Q. Do you know about the Tecumseh High School's surveys on drug use?

A. No. I am not aware of those.

Q. Well, there is one that says that less than 5 percent of the students have tried marijuana and a resounding 85 percent say they have never tried illegal drugs. These are documents the school provided to me. Do you think those statistics are true for the choir members?

A. Yes.

* * * *

[58] (298)

Q. So students engage in attempts to enhance their performance by consuming lemon juice?

A. Right.

Q. But no other substances?

A. No.

Q. Is there anything about being in the choir or the associated activities that is dangerous, in your view?

A. I don't think so. Not in my opinion, no.

* * * *

[63] (302)

Q. What are you supposed to do when you suspect a student has used drugs?

A. Refer to the office, the counselor or the principal, speak to them, tell them your concerns.

Q. And how do you know that's what you're supposed to do? Is it written in the policy or did somebody tell you?

A. That I don't know.

Q. Okay.

A. That's what I do.

Q. Well, it sounds like you're also saying that most of your students maybe even, you know, almost all of your students they're just not going to be involved in drugs anyway, is that part of what you're saying?

A. In my opinion, I think most of them are not, but even one is too many.

Q. Oh, absolutely. But I'm just trying to get a sense of the choir students as compared to rest of the high school.

A. In my opinion. We have won academic achievement awards as a choir for the state. And you're going to find that a lot of those students don't take drugs, but some do. They may be [64] (303) intelligent but not smart.

Q. Again, trying to just get the difference between the choir students though and the students as a whole the choir students use drugs less. I just wanted to clear.

A. In my opinion, I think they do.

Q. Okay. I hear you telling me there's a whole diversity among the different kinds of students that you get in the choir, people are there for different reasons.

But is there kind of a stereotype in the way that it, you know, people talk about there are jocks and there are other people. Is there a stereotype that you think is sort of associated with the choir? I'm talking about among the students is there a stereotype associated with the students?

A. All students at Tecumseh or any students?

Q. I'm taking about at Tecumseh High School is there a stereotype about the choir students?

A. Probably.

Q. What would that be?

A. You would probably have a group of students say that they were the nerds, you would [65] (304) probably have a group of students say that they respect what they do. I would like to think that was more the case and I think it is for the most part.

Q. And who would be the sort of the cool students, the ones that everybody, you know, wants to imitate?

A. To be like.

Q. To be like, yeah. Who would be the cool students that everybody wants to imitate?

A. Well, I would like to say the choir students, but I really think it's probably the jocks.

* * * *

[80] (307)

Q. Okay. When you did get the form from the student did you check and make sure they had filled it out properly?

A. I would check to make sure the parents' signature was on it and the student's and any medical information on that back page.

Q. So it's a two-page form?

A. If they had a medical —

Q. Or just front and back?

A. Two page, (indicating).

Q. Okay. So when you got the form you didn't sign the form right away. When you got the form what did you do with it?

A. I would put it in a folder and put the money in the folder. I would have class and then after when I had the free time, my planning, I would [81] (308) write receipts on the money, and then I would look at the form and wait until the deadline, collect them, and then take them all at once at the deadline.

Q. So they all just stayed there in that folder?

A. Yes.

Q. Until the deadline came?

A. Yes.

Q. So all the forms, all the money?

A. No. The money I would turn in on a daily basis. We couldn't keep the money, but the forms stayed with me.

Q. Now do you remember did the forms—you said there was a two-page form. Was it a Xerox that was on the front and back of one page or was it two separate pages?

A. Two separate pages.

Q. Okay.

A. We didn't have to turn in both pages. You only had to turn in the one that was the permission from the parents with the signature. The second page dealt with if you were on any medication—

Q. Oh.

[82] (309)

A. —that might turn up during the testing, prescription drugs or over-the-counter things, you had to list those.

Q. I see. So those forms all went into your folder?

A. Yes.

Q. And the money all went to a safe place?

A. Yes.

Q. And where did the folder—where did you leave the folder?

A. For the most part it stayed in my office. I have my room and then an office off of the room.

Q. Uh-huh.

A. On occasion it might have stayed out on a table inside the big room where the choir room part is, on occasion but not opened but there on that table. It's possible throughout the day.

Q. This is a manila folder?

A. Yes.

Q. Just sort of a basic folder that you can open and shut?

A. A file folder, uh-huh. It's possible I put it in one of those envelopes, manila envelopes.

Q. Uh-huh.

[83] (310)

A. I know I did this year. I can't recall if it was a manila folder or an envelope last year.

Q. Okay. But the forms—since you were collecting the forms sort of day by day you needed to be able to open and close and put more forms in?

A. Yes.

Q. So you did not seal this, right?

A. Correct.

Q. Okay. Would it have been possible if there were some, you know, reason if somebody wanted to that somebody might have been able to look into that folder when you left it out on the table?

A. It's possible, yes.

Q. Okay. Because since it didn't have the money in it you didn't treat it as a secure thing?

A. Because I took the money and the form at the same time.

Q. Uh-huh.

A. I often stapled the money to the form.

Q. Uh-huh.

A. Then put the form in the folder. At the end when I was through collecting it for that class period because it had money I would put it in my office and then shut the door. I won't say that it's not possible that [84] (311) sometime throughout the day I left it out on that table, but I tried to be very careful that I didn't because of money.

Q. Okay. I understand. And I just want to—I may be a little bit thick headed here, but I want to make sure I understand this. The folder had in it, you know, money maybe temporarily, but for the most part the money was

taken out, but the folder did have in it the form page 1 which every student had to do and for the students who handed in a page 2 that had the prescription medicine information, that was also in these folders?

A. Yes.

Q. And remained in the folders until you turned it in?

A. Yes.

Q. Were the prescription medicine forms put into any kind of special, you know, container or an envelope or anything like that?

A. The folder.

Q. Just the folder itself?

A. Uh-huh.

Q. And you were able to actually read the prescription medication forms yourself, right?

[85] (312)

A. Yes.

Q. Did you read them?

A. Sometimes. It depended on how many people were handing to me at one time. I didn't stop and go, (indicating), you know. I often have to know medically when kids go with me to different places, I have to know. And so I would even know even before this drug testing thing because I would have a form filled out by their parents already. When I take them places I have to know if they're on any kind of medication for whatever reason for safety purposes for them.

* * * *

[93] (1062)

Whenever I go on an overnight trip I do another form that says—that even gets into further detail asking insurance company, Social Security number of the student, parental emergency contact and list any prescription drugs that they are on.

Q. Do you do that for every trip?

A. Every trip overnight.

Q. So if they go on three overnight trips they have to fill out that form three times?

A. Correct.

Q. Okay.

A. It might change.

Q. Sure, exactly.

Did you ever talk with school officials about whether your overnight trip form was something that was necessary or appropriate?

A. That's something I did on my own because I ended up in the emergency room one time with a student and I had the form, and the emergency room [94] (1063) people said this is wonderful. I wish every person would do this.

* * * *

[108] (323)

Q. And obviously for a soloist you absolutely count on that student to show up at the performance and perform if they are going to play a solo role?

A. Yes.

Q. Okay. This is what I'm trying to get at. If you have a student who you know is not going to be in the performance for whatever reason, and you're doing rehearsals during class, that student, the student who can't do the performance, is not going to get one of those critical roles, right?

A. Right.

Q. Okay. Are there any special awards that are given to talented Tecumseh singers or honor?

A. By me?

Q. Within the school. I'm not talking about all state or any of that. But I mean, within the school itself, are there any awards given for, you know, the more talented singers?

A. Over the last two years I have not given any awards. There have been some in the past.

Q. What are the awards?

A. Outstanding freshman, outstanding sophomore, outstanding junior, and so forth. Solo performance awards, ensemble performance awards; [109] (324) outstanding musician overall.

Q. Okay. But being really realistic here, a student who isn't going to do any of the competitions or performances outside of school, would that student have any shot of getting one of those outstanding student awards?

A. No.

* * * *

[146] (338)

Q. When college recruiters are looking for talented students, generally they go to the competitions, right?

A. Sometimes, yes.

[147] (339)

Q. I mean, to be fair, that's the main place that you could identify a talented vocal student would be to go to the competitions?

A. I would see how that would be the better place because you could hear them one on one. The only time I ever recall a college that came that wasn't already—they weren't hosting the competition, was maybe at state competition. There might be some college professors that would come then.

Q. Uh-huh.

A. In my experience I've had them call me and ask may I come to your class.

Q. Sure. But they wouldn't need to call you to go to a competition?

A. No.

Q. And certainly when the colleges host the competitions they have an opportunity to observe the students sing and look for students who they might be interested in applying for that college, right?

A. Yes, uh-huh.

Q. In fact, I imagine that's one of the reasons they host these competitions, isn't it?

A. Oftentimes, yes.

* * * *

DEPOSITION OF DANNY JACOBS,
taken on behalf of the Plaintiffs, on September 23, 1999,
at Norman, Oklahoma

DIRECT EXAMINATION BY MR. BOYD:

[16] (350)

Q. Is that a man or woman, Terry?

A. That's a man.

Q. Did Mr. O'Rorke—I'm sorry, is Mr. O'Rorke a member of the school board?

A. Not at that time.

Q. So he brought up this issue in February of '98 just as a parent who was attending the meeting?

A. Yes.

Q. And was that the first time that you personally were involved in a discussion of drug testing at Tecumseh High School?

A. I wasn't in a discussion.

Q. Was that the first time you heard anyone talk about drug testing since you arrived at Tecumseh?

A. Yes.

Q. Tell me what Mr. O'Rorke said during that February 1998 school board meeting.

A. He was an incoming board member who stood up and addressed the fact that the drug issue was his number one priority, number one concern.

Q. Had you ever had a conversation with Mr. O'Rorke prior to that meeting?

BY MS. MEOLI: Can you be more

* * * *

[31] (351)

A. No.

Q. Okay.

A. I'm just trying to make sure I explained that where it was understandable.

Q. I think I do understand it now. Thank you. I just wanted to make sure I wasn't cutting you off. So this final list that you ended up proposing to them was based on a series of discussions with the board. Did those discussions also mention some other activities that it didn't make the final list?

A. Okay. Yes.

Q. Which other activities were mentioned in discussions with the board?

A. Well, let's see, in the August 31—I think it was August 31, '98, there was a board meeting that was a community board meeting and there were, let's see, there was—there were requests, you know, by others that they wanted to be a part of that policy.

Q. Requests by others, what do you mean?

A. There was a board meeting on August 31 that was a community board meeting and that was to share the policy and, you know, to get information and feedback and what not.

[32] (352)

And this would have been following—at the end of that board meeting there were sponsors who wanted to place one of their activities to be a part of the policy.

Q. These are staff members of the schools who are sponsors of extra-curricular activities?

A. Yes.

Q. Can you —

A. Staff and not staff.

Q. Okay. But these are sponsors of the school extra-curricular activities who were proposing that their activities also be subject to the drug testing; is that right?

A. In one that requested it it was not actually a school activity.

Q. Which is that?

A. Life guides.

Q. Okay. But the others—what are the others that requested to be included in the policy?

A. The one I can remember for sure that requested was the Beta club.

Q. Okay. Who is the Beta club sponsor?

A. Cindy Hale.

Q. And she herself said that she wanted to have drug testing of Beta club members?

[33] (353)

A. Yes.

Q. Who is the life guide sponsor?

A. Well, he's not a sponsor as per se for us, but he has the life guides program and that's Kent Scott.

Q. And Mr. Scott spoke at the August 31, 1998, board meeting and he requested that drug testing apply to life guides?

A. At the end of that board meeting he asked if it that could be.

Q. Were there other people who specifically asked for life guides to be tested or it was just Mr. Scott who requested that?

A. Just Mr. Scott.

Q. Okay. And I've actually seen those minutes and some correspondence that you had following that meeting and it sounds like somebody said, hey, can't we just test all the students? Wasn't that something that some people proposed?

A. Yes. Some people wanted to test all the students, yes.

Q. Did that come from the board or from the members of the public?

A. That request was from someone in the audience, members of the public.

* * * *

[45] (354)

Q. So you wrote the student athletic drug testing policy draft and you presented it to the board?

A. Yes.

Q. You follow the directions of the board, right?

A. Yes.

Q. When the boards tells you to do something you do it, that's your job?

A. Yes.

Q. So if you wrote a student athletes only drug testing policy it must be because they told you to do it?

A. Yes.

[46] (355) board meeting. And I want you to focus on this next sentence. The decision at this meeting was to put into action a policy involving extra-curricular activities as opposed to a policy relating only to athletes. Now I understand that to mean that there was under consideration a policy relating only to athletes, but on August 3rd at the board meeting a decision was made to expand it to include non-athletes. Is that what that means?

A. (reading). That's what that one means, yes.

Q. Okay. And is that accurate? Is that what happened?

A. Yes.

Q. Okay. Now, I want you to think back to that August 3rd board meeting where they decided to go from athletes only to non-athletes. Who first suggested that the policy be expanded to include non-athletes?

A. Dean Rogers, who—oh, pardon me, president of the board, who addressed the FFA issue.

Q. Tell me what she said to the extent you can remember it.

* * * *

[47] (356)

A. She believed or felt that that organization should be a part of it because they were an extra-curricular activity that was involved in competing.

Q. And when she made that observation that FFA does competitions and that they ought to be drug tested, how did the other people respond to that?

A. Positive.

Q. Do you remember what any particular person said?

A. No.

Q. Did you give any reaction to it?

A. I don't know.

Q. Now in that meeting it sounds like you started out with FFA. Did people then add suggestions for other activities that should also be drug tested?

A. There was other discussion, yes.

Q. Okay. So people discussed other candidates for drug testing, I guess that's what you're saying, right?

A. The people on the board discussed other activities.

Q. Okay. Did members of the public other than the board also make contributions at that

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[49] (357)

The non-athletic activities that ended up being including in the August 31 draft of the policy, were those all suggested at the August 3 board meeting?

A. Yes.

Q. Were they proposed by board members only or did you propose some of them?

A. The board members.

* * * *

[75] (361)

Q. And would you say that the drug testing program also demonstrates the school's commitment to oppose drug abuse?

A. Yes.

[76] (362)

Q. Before you enacted—well, before the school enacted this drug testing policy, can you recall as you sit right here today any incidents involving illegal drugs at the school?

A. Yes.

Q. Okay. Can you detail those incidents to me? Tell me everything you remember about every one of those incidents.

A. I remember that there were two in February '98, that a drug dog found a—I think it was a small bag of marijuana in the parking lot by a curb or a pole or something in the lot. And then the drug dog hit on a car that contained marijuana.

Q. This hitting on the car was a separate incident from the first incident that you described?

A. Yes.

Q. Can you recall any other incidents involving illegal drugs?

A. No.

Q. Let's talk about the first one. The drug dog found a bag in a parking lot next to a curb or next to a pole, a bag of marijuana. Was that bag ever found to belong to any particular student?

A. I don't know.

Q. Well, if a student was disciplined would [77] (363) you know about it?

A. Not necessarily.

Q. Would a student—how severe would the punishment be for possessing a bag of marijuana? What would the consequences be under school policy for a student?

A. I don't know.

Q. Okay. Is the parking lot fenced off?

A. No.

Q. Is there anything that would prevent a member of the public from walking through that parking lot?

A. No.

Q. Do people who are not students walk through the parking lot from time to time?

A. I don't know.

* * * *

[103] (367)

Q. What are the drugs that are screened for in Tecumseh's drug test?

A. On the six panel screen that would be amphetamines and barbiturates, opiates, marijuana, and then that benzodiazepines and don't ask me to spell that one. There's one I left off.

Q. Does it include steroids?

A. No.

Q. And what we're talking about here is the drug test that is done initially at the beginning of the year for all students that are covered by the policy as well as the random drug tests that are done throughout the year; is that correct?

A. Yes.

Q. But obviously if you do for cause testing, in other words, if you do testing for a student who you suspect of using a particular drug then you might including another drug, for instance, steroids; is that right?

A. Steroids would be tested under reasonable suspicion and then that would be included at that time, yes.

Q. Okay. Why did you not include steroids [104] (368) in the routine drug tests?

A. Because it's a $90 test to test for the steroids. And in my experiences that steroid is the most noticeable of drug use because a youngster is going to change body size and behavior in like a four-to-six week period. I mean, it's a substantial difference in a youngster, and at that time it would be a reasonable suspension.

Q. So you're aware of students who have used steroids? You've seen that happen?

A. Yes.

Q. Are you aware of students ever using cocaine?

A. No.

Q. Are you aware of students ever using opiates?

A. No.

Q. Are you aware of students ever using benzodiazepines?

A. No.

Q. Are you aware of students ever using any of the drugs that are included in the six panel screening?

A. Yes.

Q. Which are those drugs?

* * * *

[107] (369)

Q. Okay. So I want to know whether you know what the window of detection is for each of the different drugs that are being screened for under the drug test?

A. I know one.

Q. Which one?

A. Marijuana.

Q. And what is the window of detection for that?

A. Up to 60 days.

Q. Do you have any idea what the window of detection is for the other drugs?

A. No.

Q. The drug screen does not—the drug test that the school uses does not screen for alcohol either, does it?

A. No.

Q. Why not?

A. Because basically the window was [108] (370) extremely limited and that it would fall under the policy of reasonable suspicion.

Q. In other words, you will test a student for alcohol if you suspect the student is under the influence of alcohol at that time?

A. Yes.

Q. But once the student is no longer under the influence of alcohol the problem that you have identified is that the drug test wouldn't detect the alcohol any more; is that right?

A. Tell me that again.

Q. Okay. Let me give you an example. If the student drinks some alcohol on a Saturday night and he comes in and he does the drug test on a Monday morning, that alcohol is not going to show up; is that right?

A. Yes.

Q. So there's not really much point in doing the screen for alcohol because it's only going to pick up students who are at the moment of the drug test actually under the influence of alcohol; is that right?

A. Within that window of time that is for alcohol.

Q. What's the window of time?

[109] (371)

A. As I said, I don't know.

Q. But it's pretty short?

A. Yes.

Q. Okay. The drug test doesn't screen for nicotine either, does it?

A. No.

Q. Or for tobacco?

A. (shakes head). No. I'm sorry.

Q. That's okay. Why not?

A. Why not? The part of the six panel screen was for just those drugs that I tried to remember the list for you.

Q. So this package of the six panel screen was offered to you by the DATL, by the lab?

A. Yes.

Q. Did they say that they could test for nicotine or tobacco?

A. No.

Q. Did you ask them about it?

A. No.

Q. Did the subject ever come up in any conversation that you have had with anyone until today?

A. No.

Q. The school board never discussed whether

[110] (372)

Q. Is it legal for a minor to possess or consume tobacco products in Oklahoma?

A. No.

Q. Is it harmful for a youngster to consume tobacco?

A. Yes.

Q. Why?

A. Because it's an addiction and then also cancer causing.

Q. So tobacco can potentially kill you?

A. It's possible.

* * * *

[119] (379)

Q. So is it your understanding that the school requires evidence of immunizations for its students rather than actually performing the immunizations itself; is that right?

A. Yes.

Q. So a student is free to go to a private physician and get their shots and bring an appropriate document from the doctor and to show that they have had the shots. Is that how it works?

A. Yes.

Q. Now athletes have to have a physical exam; isn't that right?

A. Yes.

Q. That's a safety requirement?

A. Yes.

Q. If you're not an athlete—let me rephrase that. Students who do not do athletics do not have to have a physical exam, do they?

A. Correct.

Q. For the non-athletes is there any medical requirement other than immunizations?

A. No.

Q. Athletes also use locker rooms to get [120] (380) undressed and dressed; isn't that right?

A. Yes.

Q. And they shower in the locker rooms as well, don't they?

A. Yes.

Q. That's true for all the team sports that the students might engage in, the athletic team sports?

A. Not all.

Q. Which ones would not involve showering or undressing?

A. Okay. Pardon me. You mean the undressing parts?

Q. Yes.

A. That would be all.

Q. Okay.

A. I was addressing the showering.

Q. Which team sports would not involve showering?

A. Some may choose not to. Can I clarify that. For instance, if you get on a bus and go to a track meet and you come home in the night or, you know, those kids go home as opposed to the shower.

[121] (381)

Q. Do they practice at school?

A. Yes.

Q. The track team? And they would shower after practice, right?

A. Possibly.

Q. Okay. Now I want you to have in mind the extra-curricular activities that are listed in the Tecumseh policy that are not athletic, okay? Do you have those in mind?

A. Okay.

Q. Do any of those activities require the participants to ever take a shower together?

A. No.

Q. Do the participants in any of those activities ever get fully undressed in front of other students as part of their activity?

A. Yes.

Q. Please give me every example you can think of in which that has occurred.

A. Well, okay. You know, there's a deal at Enid, Oklahoma. It's called Tri-State, for instance, and that's a band I think, still a vocal deal, and the kids they'll go there for competition. And those kids will, say, stay in the Salvage Army building or they will stay in sleeping

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[124] (382) facility?

A. Even the women athletes have access to private shower facilities, you know, so in a motel room they would. I don't know about some of the places that they would go. Like that Tri-State thing at Enid, I don't know how that's set up or arranged.

Q. Okay. But to your knowledge though is there any example of students who travel for non-athletic extra-curricular activities not having access to private toilet facilities?

A. No.

Q. And is there any instance that you're aware of in which— no, forget it. I'm not going to ask that.

Okay. Other than traveling and having to share overnight accommodations, can you think of any other instance in which non-athletic extra-curricular students are required to completely disrobe in front of other students?

A. No.

* * * *

[126] (384)

Q. But there are some special dangers that apply when you're doing athletics, is that also something that you would agree with?

A. There are some dangers other than the violent behavior, yes.

Q. No. My question is aside from those dangers that would apply to everybody in the general population, are there some particular dangers that apply in the context of doing the athletic [127] (385) activities?

A. Yes.

Q. Tell me about those, please. What are those dangers?

A. It's just like the example I just gave you. If you're going to have to deliver a blow or receive a blow you have to be ready to position yourself, you know, to handle yourself in a particular situation under those—and be able to react immediately or instinctively.

Q. Do students of the choir ever face a situation like that where they have to be delivering a blow or receiving a blow?

A. Not unless they encounter violent behavior.

Q. But there's nothing about choir that involves that sort of activity?

A. Nothing about delivering or receiving a blow.

Q. Is there anything about the band that involves delivering or receiving blows?

A. No.

Q. Is there anything about the FFA or FHA or the academics team that involve delivering or receiving blows?

[128] (386)

A. No.

Q. So for the non-athletic activities that are subject to the drug test policy, students are never involved in delivering or

receiving blows in the way that the athletes are that you described; is that correct?

A. Yes.

* * * *

[140] (387)

Q. Okay. Who does the physical exams of the athletes?

A. It's my understanding there were M.D.'s and nurses available and they do it on a set night, and then some youngsters go to their family physician. And whatever the case the physical must be taken on a OSSAA form and that is the Oklahoma Secondary Schools Activities Association. Everyone has the same form so everything is done, you know.

Q. So these medical personnel, they come to the actual school facility and do the examinations [141] (388) there in the school?

A. Yes. The high school was done by medical personnel, and if I remember correctly the middle school was done through the cooperation of Shawnee Mission Hospital.

Q. Okay. Does the physical examine involve taking any body fluids, blood, urine, saliva, anything like that?

A. Not unless their findings would dictate that, no.

Q. What do you mean, their findings?

A. When you're talking the physical if, you know, if they find a child with a hernia or a child with a lump. I mean, that youngster would be referred for other—you know, for other testing naturally, you know, through the parent.

Q. Okay. But the initial testing doesn't involve taking any bodily fluids?

A. No.

Q. What does it involve?

A. Okay. I haven't done that in a long time. But, you know, they do their height and
weight, you know, they check the eyes, ears, nose and throat, their pulse and I know they listen to their heart.

[142] (389)

I know they check them for hernias. They ask for any prior medical condition. That's to the best of my knowledge what I can remember is on form.

Q. Describe to me how you check somebody for a hernia.

BY MS. MEOLI: Are you talking about him generally, Mr. Boyd, or the Tecumseh School District in general?

BY MR. BOYD:

Q. Based on your experience at Tecumseh or elsewhere with the filling of requirements of the OSSAA for athletes, including the requirement that a hernia evaluation be performed, I'm asking you to describe how the hernia check is done.

A. You've got to remember that I told you I'm trying to remember that form the best it was and a hernia check is done by an M.D.

Q. Do you know how an M.D. does it?

A. He puts a glove on.

Q. Describe it.

A. I don't know where you're going.

Q. How do you do a hernia check?

A. The guy puts a glove on and he checks you.

[143] (390)

Q. How? What does he do?

A. Well, first of all you're in there and you're disrobed and he's checking you to make sure that don't have a rupture.

Q. How does he check you?

A. Well, by putting his finger in those points where they check for hernia.

Q. Where are the points that he puts his finger? Are they in any private areas, what we call private areas?

A. Oh, yes. Down by your testicles and your penis, in that area. And I couldn't begin to tell you how they check a female.

Q. You said the students were asked to disclose their medical conditions, right, that that's one of the standard questions on the OSSAA form?

A. When I last did it. You know, they wanted to know if the youngster had had open heart surgery or if a youngster had one kidney.

* * * *

[180] (394)

Q. Okay. Who else is in the bathroom with the students when they're giving the sample?

A. The adult staff member who is assigned to be in there.

Q. And what they are doing?

A. Listening for normal sounds of urination, you know, making sure that the validity and confidentiality of that thing is in place.

Q. When you're using a sample cup what are the normal sounds of urination?

A. I don't know how to describe that to you.

Q. Is it because it's an uncomfortable question?

A. No. I'm trying to figure out how to answer that for you. I don't know how to describe it to you.

Q. The boys who are giving the urine samples, they have to urinate into these two cups which are not particularly large cups. Are they supposed to fill them both up or fill them up to a

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[182] (395) faculty sponsors are supposed to check certain aspects of the urine, right?

A. Yes.

Q. What do they check for?

A. Well, they make sure that that sample

that was in that cup was of, you know, body temperature.

Q. And how do they do that?

A. Well, you would—you can feel and tell if it would be warm or cold.

Q. So the student's teacher or coach holds the cup of urine in his or her hand and feels the temperature?

A. Yes. They would have to when they were sealing it.

Q. Do they look at it for its color or its clarity?

A. Yes.

Q. Is the student standing there watching the teacher or the coach examine their urine?

A. They seal that together.

Q. So the student is standing there?

A. Yes. They seal that together.

* * * *

[220] (408) you do not sign the drug testing form you will be excluded from the activities that take place after the normal school day or on the weekends; is that correct?

A. Yes.

Q. Okay. How many students have tested positive for the presence of drugs during the drug test administered during this school year and the last school year as part of the random program for the initial drug testing screening? Okay. 98-99 was random and they were three. 99-2000 was initial and there was one.

Q. Do you know the total number of students who were subjected to all of those different drug tests? Take your time.

A. In the 98-99 there were 243 tests.

Q. Those were all random tests of students who participated in extra-curricular activities, correct?

A. I just remember the 243.

Q. Actually I just remembered I had a letter from your lawyer that tells me this information, so I'm going to help you out and let me read you what she said and you can tell me if that's correct, okay?

[221] (409)

A. Okay.

Q. The total number of tests conducted on the students for the 1998-99 school year was 243. Prior to the abatement

of the policy on August 16, 1999, 241 drug tests were conducted for the 1999-2000 school year. Does that sound right to you?

A. Yes.

Q. Is there anything you want to add or modify?

A. Yes. The number 266 is in my mind on 99-2000.

Q. Okay. Well, you certainly have the opportunity to correct that number 241 if you need to. But let's agree that we're in the ball park of about 500 students have been drug tested during the two years.

A. Yes. (Discussion off the record)

Q. This is not to me significant whether we're talking about, you know, a difference of 10.

A. 500 is in that ball park.

Q. But what we're talking is about 500 students that have been drug tested. And so this is the pool we're talking about for which there have

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[235] (410)

Q. But that would also describe the French club or the year book or any number of other activities also, right?

A. Privilege, yes.

Q. Voluntary?

A. Yes.

Q. And these activities also involve travel, right?

A. Yes.

Q. But, again, there are many other activities that involve travel, field trips, Beta club, some of those activities also involve travel, right?

A. Yes.

* * * *

[237] (411)

Q. Is there an auto mechanics kind of class or activity at the high school?

A. No, but there is mechanics as far as welding.

Q. And there's a shop that involves wood tools, I suppose?

A. That's yes. That's part of the kids that are in the FFA program.

Q. Can you do it apart from the FAA program

* * * *

[241] (412)

A. You can harm yourself either way.

Q. All right. I understand that. And my question to you though is between these two different activities is one of them, in your opinion, more risky comparing using drugs in the marching bands and the possibility of heat exhaustion versus being under the influence of drugs and using a power saw?

BY MS. MEOLI: You can answer that question yes or no, Mr. Jacobs.

BY THE WITNESS: Yes.

BY MR. BOYD:

Q. Which of those activities is more risky?

A. A power saw.

[242] (413) characteristic shared by the non-athletic extra-curricular activities subject to drug testing is that students engage in interscholastic competitions. Why is that a reason to do drug testings on this group of students?

A. Because those youngsters are at—can be at risk at some point in time. Also, in competitions they wont be as alert.

Q. You said one of the reasons to focus drug testing on the activities with competitions is that the students could be at risk during the competitions. But, again, that would be true of a number of activities not involving competition, just like with the power saw and the chemistry lab and really anything being involved in drugs could create equal or greater risks then in these activities, wouldn't you agree?

A. That they would be greater risks than these competitions.

Q. Student's involvement with drugs when they operate power saws and when they're in chemistry labs or when they perform any number of other activities could subject them to risks that are equal to or even greater than the risks that

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[246] (414)

Q. And you were talking earlier—I mean, I could tell when you were talking earlier about the academic team and its successes, I noted some pride in your voice and that's appropriate.

A. Big time.

Q. Big time. And a lot of your other activities have done very well, too. The choir has been very successful, right?

A. Definitely.

Q. So when these teams go out into the public representing the school it's part of what they're doing of projecting an image of what the school is and what the school stands for?

A. Yes.

[247] (415)

Q. And this function of representing the school to the public, is that part of the reason that these activities are subject to drug testing, that you want to tell the public that at Tecumseh High School we project a drug-free image?

A. We do want to project a drug-free image, but we also want to give those kids an opportunity as a preventative measure to be able to say no.

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DEPOSITION OF DANNY JACOBS,
taken on behalf of the Plaintiffs on October 25, 1999,
at Norman, Oklahoma.

DIRECT EXAMINATION BY MR. BOYD:

[301] (423) which case it was?

A. Yes.

Q. I just want to make sure I understand.

A. Yes, sir.

Q. Okay. And do you remember there was some discussions at school board meetings during the period of July, August 1998 regarding the legal limits of student drug testing and the fact that the school could not drug test all of its students? Do you remember there being some conversations along those lines?

A. Yes.

Q. And when those conversations took place were you aware of this court case that allowed drug testing of the non-athlete, extra-curricular students?

A. Yes.

Q. Is a reason that this school policy applies to extra-curricular students because that was the legal limit of testing?

A. Yes.

Q. And in selecting the extra-curricular students for testing you never heard any discussion, including these school board meetings, you never heard any discussions that students participating in [302] (424) non-athletic extra-curricular activities were selected because they engaged in especially dangerous activities or because they were more likely than other students to use drugs?

A. No.

* * * *

[316] (425)

A. The policy said that there would be no academic sanction.

Q. Besides that phrase in the policy is there any other place in writing that you can point to that shows that class enrollment or a grade will be unaffected by refusing to take a drug test?

A. No.

* * * *

CROSS-EXAMINATION BY MS. MEOLI:

[350] (429) he asked you if you notified or if Mr. Gower notified anybody else and your response was they notify the patient of that child and set a meeting up. Does Mr. Gower notify any kind of a patient?

A. No.

Q. Who does Mr. Gower notify when a positive result is received by you?

A. It would be the parent.

Q. Okay. Who else is notified?

A. It would be the parents and then the sponsor or coaches of those classes that that youngster is in.

Q. Mr. Jacobs, do you know approximately how many patrons appeared at that August 31st board meeting?

A. [50] [2]. Maybe a few more than [50].

Q. And you were there during that whole board meeting?

A. Yes.

Q. Did any patron or anyone in the audience speak out against the implementation of this policy?

A. No.

Q. The board then implemented or voted on [351] (430) the policy on September the 14th, correct?

A. Yes.

Q. And the policy was implemented on what date, if you remember?

A. October 19th.

---

[2] The actual transcript of the deposition stated "15." However this was a mistranscription, and was duly modified by the witness on the errata sheet to the deposition.

Q. Does that date have any other kind of significance other than the fact that the drug test was started on that date?

A. It would have been in relation to the end of the semester, the beginning of the second one, and for us that would be a nine-week period.

Q. Okay. So students that were enrolled in the first semester, which in Tecumseh lasts nine weeks, would not have been affected whatsoever by the drug testing policy; is that correct?

A. Correct.

Q. Was it intentionally started on the first day of the second semester?

A. Yes.

Q. Let's go back to this policy for one second. I want to ask you a couple of other questions about the Oklahoma Secondary Schools Athletic Association. We have already I think stated that all of the activities that are listed under the—on

* * * *

RE-DIRECT EXAMINATION BY MR. BOYD:

[357] (431)

Q. Can you tell me again what OSSAA stands for?

A. It's the Oklahoma Secondary Schools Activities Association.

Q. Does the OSSAA require drug testing for its own eligibility rules?

A. No, sir.

Q. Can Oklahoma school students from schools without drug testing compete in OSSAA sanctioned competitions?

A. Yes.

* * * *

ART II

Prerequisite: Art I
Concepts from Art I will be reinforced such as visual elements and principles of design. More emphasis will be placed on drawing, painting, print-making, art history, graphic design, life drawing, interior design, architecture and environmental design.

ART III

Prerequisite: Art II
Concepts from Art II will be reinforced such as visual elements and principles of design. More emphasis will be placed on drawing, painting, print-making, art history, graphic design, life drawing, interior design, architecture and environmental design.

ART IV

Prerequisite: Art III
Concepts from Art III will be reinforced such as visual elements and principles of design. More emphasis will be placed on drawing, painting, print-making, art history, graphic design, life drawing, interior design, architecture and environmental design.

CERAMICS I / SCULPTURE

This is an introductory course in basic pottery skills. Students create pottery, using several hand building techniques, learn to fire the kiln, and formulate glazes and clay bodies. Art History will be incorporated into this class.

CERAMICS II / SCULPTURE

Prerequisite: Ceramics I
More emphasis is placed on individual development of design concepts and mastery of hand build pottery. A more in depth continuation in the study of art history.

CERAMICS III

Concepts of Ceramics II will be reinforced with an emphasis placed on wheel thrown pottery.

CERAMICS IV

Concepts of Ceramic III will be reinforced with an expectation of the mastery of skill and technique. Presentation and a portfolio of work will be completed.

ART HUMANITIES

This course focuses on a History of the Humanities, the visual arts, and their parallels in music and literature. Works of art from a variety of cultures are introduced in distinct historical periods, from prehistoric to the contemporary. Students will be involved in the production and criticism of art, as well as studying art's history and aesthetics.

HIGH SCHOOL CHOIR

Objective: To acquaint the students with the basic fundamentals of vocal techniques and to expose them to various kind of musical literature. Basic vocal fundamentals include rhythm, pitch, tone, color, breath control, and visual performance. Musical literature includes contest, solo ensemble, choir, sacred, poplar, classical, and musical theater. Any student grades 9-12 may enroll. Extra rehearsal time before or after school may be required periodically. Attendance at all contests, concerts, festivals, etc. is expected.

MUSIC APPRECIATION

One Semester/Block
The purpose and objective of this class is to provide an opportunity for the student to understand and appreciate the origins of popular music in America. The class will focus mainly on the development of Rock Music but also will be

exposed to Jazz and Country/Western. Students will be tested from audio and video tapes as well as notes taken from lectures during class.

SHOW CHOIR

Objective: To acquaint the students with the basic fundamentals of vocal techniques, to expose them to various kinds of musical ability and visual performance. Basic fundamentals include rhythm, pitch, tone, color, breath control, and visual performance. Musical literature includes contest, solo, ensemble, choir, sacred, popular, classical, and musical theater. Visual performance included choreography. Students, grades 9-12, who have been chosen by audition in the spring prior to the school year any enroll. Attendance at extra rehearsals, concerts, contests, festivals, etc. is required. Certain academic and moral standards are required.

CONCERT/MARCHING BAND

Prerequisite: Minimum year of previous formal training (band class or private lessons)

This course is *designed* to reinforce instrumental skills by way of practice and performance. Performance at Varsity Football and Basketball Games, contests, solo and ensembles and extra rehearsals is required. Also many city and state civic activities are attended by this group.

STAGE BAND

Prerequisite: Must be a member of the Concert/Marching Band or attain permission from the band director. This course is designed to broaden the horizons of students through the use of jazz *music*. Skills students would be exposed to include: basic music theory, improvisation, music history and improvement of basic instrumental skills. Extra Rehearsal: Public performances will be required, as the Stage Band will be a Major Public Relations force in and out of the community.

MUSIC THEORY/FUNDAMENTALS

The purpose of this course is to prepare college bound music majors or minors to function effectively in a collegiate level Music Theory course. Also, to give talented students of composition more tools with which to *work* to produce functional compositions of precise musical forms. It should provide basic music theory skills, key signature recognitions, major and relative minors, knowledge of intervals and their relationships, scales: all major and all 3 forms of minor scales.

AUXILIARY CORPS (Color Guard)

The auxiliary corps is an extension of the marching band. It includes flags and rifles. The basic fundamentals of marching, twirling, and handling the equipment and maneuvering are taught and stressed. The corps performs with the Senior Band during marching activities. After marching season, the corps performs as a separate unit. Membership is chosen by audition.

FOREIGN LANGUAGE

Some courses have prerequisites.

SPANISH I

Beginning Spanish is taught be means of a carefully balanced four-skills approach: listening, speaking, reading and writing. Spanish is learned through grammar and vocabulary, model sentences, usage note, grammar and usage explanations and reviews, reading practice and abundant oral and written exercises

SPANISH II

Prerequisite: Recommended "C" or better in Spanish Teacher approval

This is a continued approach of the four-skills: Listening, speaking, reading, and writing. More emphasis is put on constant Spanish conversation, using various tenses, as we customarily use in our native languages.

SPANISH III

Prerequisite: Recommended "A" or "8" in Spanish II

Advanced grammar will be introduced and applied to reading literature as well as oral projects. There will also be some written work involved in this level.

SPANISH IV

Prerequisite: Successful completion of Spanish III

This course is a review of grammatical structures, verb tenses and moods, composition, as well as a continuing study to improve student's skills in listening, speaking, reading, and writing. Students also will be introduced to Spanish culture and literature. This course is designed to prepare students to take advanced-standing exams for college credit.

FRENCH I

Students learn common French phrases. vocabulary, and simple sentence construction. Although students will learn to read and write the French language, primary emphasis is given to speaking and hearing the language. Some comparative studies of French-speaking and American culture and history will also be made

OKLAHOMA STATE DEPARTMENT OF EDUCATION
Gerald E. Hoeltzel, State Superintendent of Public Instruction

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APPLICATION

The Drug-Free Schools and Communities Act of 1986,
Part 2, Title V of the Augustus F. Hawkins—Robert T. Stafford
Elementary and Secondary School Amendments of 1988
(P.L. 100-297)

1989-90 School Year

Application Closing Date: September 29, 1989

Funds have been appropriated by the U.S. Congress to establish programs of drug abuse education and prevention coordinated with related community efforts and resources. The Act provides federal financial assistance to states for grants to local and intermediate educational agencies and consortia to establish, operate, and improve local programs of drug abuse prevention, early intervention, rehabilitation referral, and education in elementary and secondary schools. Completion of this application is necessary to enable an LEA or consortium of LEAs to receive funds under this act.

Complete all parts of the application and send the original to:

Oklahoma State Department of Education
Drug Education; Comprehensive Health Section
Room 2-14, Hodge Education Building
2500 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105-4599

Tecumseh	I-92	Pottawatomie
District Name	District Number	County
302 S. 9th Tecumseh, OK	74873	$8,757
District Address	Zip Code	FY1989 Allocation

Charles Shields — (405) 598-3739
LEA Contact Person for Drug Education — (Area Code) Telephone Number

9-13-89 — Jim V. Myers
Date — Signature of Authorized Representative

I. *Needs Assessment*

Briefly state the e:ttent of the current drug and/or alcohol problem in the local district. Identify needs for a drug and alcohol abuse education and prevention program and describe how these needs were identified.

Current surveys from sources such as the Pottawatomie County Alternative Education Program point to a continued use and abuse of alcohol among our student population. Drugs are used but the survey indicates the percentage of users is stable, if not dropping. A comprehensive program is needed for all students in grades K-12. Said program should focus not only on prevention of drug and alcohol abuse but also many of the social problems teenagers face such as teen pregnancy, dropout, etc. These programs should be based on positive reinforcement of self image and character, and should equip the students with needed social skills with which to combat negative peer pressure.

II. *Current Policies*

A. Describe the current drug and alcohol policy including an explanation of practices and procedures used to enforce the policy.

Currently, Tecumseh Public Schools ban use of selling, buying, transmitting, or secreting any alcoholic beverage, narcotic, hallucinogenic drug, marijuana, barbituate, amphetamine, intoxicant or other prohibited substance.

All due process rights are observed. Drug dogs are used along with routine administrative checks, teacher observations to determine violators. Students will be suspended for violation of the policy. Said suspension may be to the Pottawatomie County Alternative School or regular suspension depending on the circumstances.

B. Does the policy have established practices and procedures designed to eliminate the sale and/or use of drugs and/or alcohol on school premises?

Yes

C. How does the local district convey to students the message that drug and alcohol use at school or school sponsored events is not permissible?

Besides the published policy of the Board of Education, the student handbook and the Student Rights and Responsibilities manual contain statements concerning the consequences of use of alcohol or drugs on school grounds or during school sponsored activities.

F. Indicate below if your district would be willing to participate in a state-wide survey of students. The survey would be comprised of questions on the knowledge, attitude, and behaviors concerning drug and alcohol related issues. All expenses would be incurred by the State Department of Education.

YES __X__ NO_____

G. Briefly state any significant gains that have been observed since participating in this grant. (i.e. fewer reports of DUI, less vandalism, decline in drug referrals, increases in student support groups, etc.)

Student support for drug/alcohol awareness programs has increased significantly. We have had very few at school drug/alcohol incidents the last two years. Student

organizations have been instrumental in organizing drug/alcohol free dances, Teens Openly Against Drugs, and other "Say No" projects.

VIII. *Local Advisory Council*

A. Provide a list of advisory council members and designate groups and organizations which each represents.

Member's Name	Group or Organization Represented
	Parent
	Teacher
	Law Enforcement
	Medical Professional
	Local or State Government
	Community Organization
	Member at Large
	Member at Large
	Member at Large
	Member at Large

(Attach Additional Page if Necessary)

B. Briefly describe how the Local Advisory Council was involved in project planning.

NOTE: FIRST YEAR APPLICANTS AND PREVIOUS GRANT RECIPIENTS MUST COMPLETE ALL QUESTIONS ON THIS APPLICATION.

OKLAHOMA STATE DEPARTMENT OF EDUCATION
Gerald E. Hoeltzel, State Superintendent of Public Instruction

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APPLICATION

The Drug-Free Schools and Communities Act of 1986,
Part 2, Title V of the Augustus F. Hawkins—Robert T. Stafford
Elementary and Secondary School Amendments of 1988
(P.L. 100-297)

As amended by Public Law 100-694

1990-91 School Year

Application Closing Date: October 1, 1990

Funds have been appropriated by the U.S. Congress to establish programs of drug abuse education and prevention coordinated with related community efforts and resources. The Act provides federal financial assistance to states for grants to local and intermediate educational agencies and consortia to establish, operate, and improve local programs of drug abuse prevention, early intervention, rehabilitation referral, and education in elementary and secondary schools. Completion of this application is necessary to enable an LEA or consortium of LEAs to receive funds under this act. The LEA must submit its application to the SEA for approval within 120 days after the SEA notifies the LEA of its allocation.

Complete all parts of the application and send the original to:

Oklahoma State Department of Education
Drug Education; Comprehensive Health Section
Room 2-14, Hodge Education Building
2500 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105-4599

Tecumseh	I-92	Pottawatomie	63
District Name	District Number	County	County Number

302 S. 9th, Tecumseh, Oklahoma	74873	$12,008.00
District Address	Zip Code	FY 1991 Allocation

$ -0-
FY 1989 Carry over (see page 8)
(School Year 89-90)

Charles Shields	(405) 598-3739
LEA Contact Person for Drug Education	(Area Code) Telephone Number

9-5-90	Jim V. Myers
Date	Signature of Authorized Representative

E. Briefly state any significant gains that have been observed since participating in this grant. (i.e. fewer reports of DUI, less vandalism, decline in drug referrals. increases in student support groups, etc.)

Improved awareness at all levels, improved communication and decision making at the elementary level. Student support groups and outward .student action has increased over the last 3 years. Surveys show alcohol steady but drug use is going down. Very few drug/alcohol incidents at school and more proactive events such as drug/ alcohol free parties by student groups are more evidence of positive impact of drug education programs.

VIII. *Local Advisory Council*

A. Provide a list of advisory council members. Match names of members with listed groups or organizations which each represent. If a listed group or organization cannot be represented, please attach an explanation to this section.

Member's Name	Group or Organization Represented
To Be Announced	Parent
Susanne Manlev	Teacher
Detective Al Turner	Law Enforcement
Pat Thomason	Medical Professional
Randy Swinson	Local or State Government
Rev. Nancy Danson	Community Organization
Jesse McCullar	Member at Large
	Member at Large
	Member at Large
	Member at Large

(Attach Additional Page if Necessary)

B. Briefly describe how the Local Advisory Council was involved in project planning.

The Chemical People movement gave us the beginnings of a solid base of support for programming. Plans were made at that time for community efforts. Some have been accomplished. It is time once again to initiate further planning for the future.

OKLAHOMA STATE DEPARTMENT OF EDUCATION
Sandy Garrett, State Superintendent of Public Instruction

APPLICATION

The Drug-Free Schools and Communities Act of 1986,
Part 2, Title V of the Augustus F. Hawkins—Robert T. Stafford
Elementary and Secondary School Amendments of 1988
(P.L. 100-297) As amended by Public Law 100-694

1991-92 School Year

Application Closing Date: October 15, 1991

Funds have been appropriated by the U.S. Congress to establish programs of drug abuse education and prevention coordinated with related community efforts and resources. The Act provides federal financial assistance to states for grants to local and intermediate educational agencies and consortia to establish, operate, and improve local programs of drug abuse prevention, early intervention, rehabilitation referral, and education in elementary and secondary schools. Completion of this application is necessary to enable an LEA or consortium of LEAs to receive funds under this act. The LEA must submit its application to the SEA for approval within 120 days after the SEA notifies the LEA of its allocation.

Complete all parts of the application and send the original to:

Oklahoma State Department of Education
Drug Education; Comprehensive Health Section
Room 2-14, Hodge Education Building
2500 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105-4599

Tecumseh	I-92	Pottawatomie	63
District Name	District Number	County	County Number

302 S. 9th Tecumseh, Oklahoma	74873	$12,944.00
District Address	Zip Code	FY 1991 Allocation

$ -0-
FY 1989 Carry over (see page 8)
(School Year 90-91)

Charles Shields	(405) 598-3739
LEA Contact Person for Drug Education	(Area Code) Telephone Number

9-6-91	Jim V. Myers
Date	Signature of Authorized Representative

XI. Briefly state any significant gains that have been observed since participating in this grant. (i.e. fewer reports of DUI, less vandalism, decline in drug referrals. increases in student support groups, etc.)

Improved awareness at all levels, improved communication and decision making at the elementary level. Student support groups and outward student action has increased over the last 3 years. Surveys show alcohol steady but drug use is going down. Very few drug/alcohol incidents at school and more proactive events such as drug/alcohol free parties by student groups are more evidence of positive impact of drug education programs. A HOPE program has been implemented and extra sections have had to be added because of interest.

XII. Local Advisory Council

A. Provide a list of advisory council members. Match names of members with listed groups or organizations which each represent. If a listed group or organization cannot be represented, please attach an explanation to this section.

Member's Name	Group or Organization Represented
Barney Shirey	Parent

Danita Dayton	Teacher
Detective Al Turner	Law Enforcement
Pat Thomason	Medical Professional
Randy Swinson	Local or State Government
Rev. Pat Buss	Community Organization
Jesse McCullar	Member at Large
	Member at Large
	Member at Large
	Member at Large

(Attach Additional Page if Necessary)

B. Briefly describe how the Local Advisory Council was involved in project planning.

The Chemical People movement gave us the beginnings of a solid base of support for programming. Plans were made at that time for community efforts. Some have been accomplished and work continues on others.

Tecumseh — District Name
I-92 — District Number

PART A

PROBLEM INDICATORS

For elementary and secondary compuses in the district, indicate the number of drug-related activities.

Drug-Related Activities	Number of Incidences			
	1991-1992		1992 - 1993	
	Elem.	Sec.	Elem.	Sec.
1. Counseling referrals related to the use of illicit drugs or alcohol	0	29	0	24
2. Students referred for treatment related to the use of illicit drugs or alcohol	0	12	0	8
3. Disciplinary referrals related to possession or sale of illicit drugs or alcohol	0	3	0	3
4. Juvenile arrests for offenses related to illicit drugs or alcohol	0	0	0	0
5. Incidences of gang violence	0	0	0	0
6. Violent acts against students	0	0	0	0
7. Violent acts against teachers/staff	0	0	0	0

PART B

POLICIES

Please place an X for your districts student enrollment range.

	0-999	X	1,000-4,999		5,000 +

Are the following elements a part of the district's drug and alcohol policies?	Circle the appropriate response for each item	
1. Expulsion is a part of a range of sanctions for violations	(Yes)	(No)
2. Violation of the school's drug and alcohol policy results in notification of the students' parents by the school district	(Yes)	(No)
3. When a student violates the school drug policy pertaining to the use of illegal drugs participation in a counseling or treatment is required	(Yes)	(No)
4. Parents and other community members are involved in the creation, review and adoption of the school drug and alcohol policies	(Yes)	(No)
5. Different sanctions are used for violations involving alcohol for similar violations involving other illegal drugs	(Yes)	(No)
6. Notification of law enforcement officials for violations is a part of the school drug policy	(Yes)	(No)

APPLICATION PACKET

Drug-Free Schools and Communities Act of 1986
Three Year Application
FY 94, FY 95 and FY 96

Send the completed application and one copy to:
State Department of Education
2500 North Lincoln Blvd.
Oklahoma City, OK 73105-4599

DUE: OCTOBER 29, 1993

District Name Tecumseh District Number 1092

County Name Pottawatomie County Number 63

District Address 302 S. 9th

City Tecumseh Zip 74873

Name of Project Coordinator Tom Wilsie

Phone (405) 598-3739 Fax

Note: For school years 1994-95 and 1995-96, the local ed
submit a current year budget plus any revisions or modifi

Lisa Easley-Gage
521-4533
4507

If the LEA chooses NOT to participate in the 199 superintendent should sign in the space provided below Education. This signature authorizes the Department to

Signature _____

I. ASSESSMENT:

Analyze your current program. Determine what areas are in need of special emphasis for the next three years. You may find that in addition to your basic program, a special program designed to place emphasis on alcohol, or tobacco should be implemented. In order to identify program needs, many districts have opted to implement a student survey to determine baseline data as to how many students are using drugs, their patterns of use, and their attitudes about drugs. It is imperative that districts establish baseline date and to annually follow up on that information. Needs should be identified using objective measures (date bases), rather than using subjective measures (opinions).

A. Briefly describe the extent of current drug use in the school, including alcohol and tobacco.

The extent of current drug use in our schools vary depending on the site. The students in the lower grades in our elementary schools (K-5) are typical of other students this age. The use of drugs, including alcohol and tobacco, are minimal with occasional experimentation with these substance in the upper elementary. As the students move into the middle school and high school the experimentation level grows accordingly as does the instance of regular use. The middle school instance of alcohol and tobacco use is comparable with about 20% of the student shaving tried cigarettes or alcohol and about 10% having tried them many times. Less than five percent acknowledged having tried any other drugs such as marijuana.

B. What objective measures did you use to arrive at this assessment?

The students were given surveys to help evaluate the extent of the use of tobacco, alcohol and other drugs among our students. The surveys involved all students in grades three through eight and a cross section of students in our high school. At the high school level, parents and teachers were surveyed to gain their response to the amount of tobacco, alcohol and other drug use among our students.

Application for:
Safe and Drug-Free Schools
and Communities
1995-96 School Year (FY96)

[Logo]

Sandy Garrett
State Superintendent of Public Instruction
Oklahoma State Department of Education

District Information

Complete this application to apply for funds under the Safe and Drug-Free Schools and Communities program. A typewritten original copy of the district's application must be received or postmarked not later than Friday, May 26, 1995. Mail or hand deliver (DO NOT FAX) to: Health/Safety and Physical Education Section, State Department of Education, Room 315, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Direct questions or concerns to: Dr. Roy Allen (405) 265-4255 and/or Ms. Lisa Easley-Gage (405) 521-4507.

TYPE OF APPLICATION
Single District [X]
*Consortium

*If applying as a consortium, attach a list of all participating LEAs.

County Name and Number: Pottawatomie 63
District Name and Number: Tecumseh I092
Superintendent: Dr. Jim V. Myers
Mailing Address: 302 S. 9th
City, State, Zip: Tecumseh, OK 74873
Telephone: 405/598-3739
Contact person for the Safe and Drug-Free Schools grant:
Marty Lewis
(405) 598-3739 (405) 598-3739
(School number) (Summer number)

I hereby certify that we will comply with all assurances as set forth in the Safe and Drug-Free Schools and Communities Act of 1994.

Jim V. Myers
Signature of Superintendent

FOR SDE USE ONLY Signature of Approval Approval Date Allocation	REMINDER Attach all participating private nonprofit school applications to this application. DUE DATE MAY 26, 1995

2. ANALYSIS OF CURRENT USE

Through annual drug use and violence surveys given to our students, we have gained valuable information concerning our student population. This information allows us to evaluate the extent of the drug, alcohol and tobacco use among our students. It also gave us information concerning not only the use but the type most frequently used, the location of use, the extent the student see these items used at school and away from school. This year we also included a section on violence which helped us address another area. of concern for our young people. The survey asked for their views on how much violence they see at home or on television, how much violence they experience and participate in.

The use of the surveys have provided us with information concerning alcohol as our number one problem. Our students express that the main use is alcohol on the weekends. This has been a continuous problem area each year. We have not found other types of illegal or controlled substances to be a major problem although they do exist. The consequences of the use of, distribution, and/or possession of alcohol, illicit drugs or other chemical substances is positively forbidden on school property at any time by anyone. Any case involving the possession and misuse of narcotics and for dangerous drugs will be reported immediately to the principal or school official in charge. Any student under the influence of alcohol and/or drugs will be immediately removed from contact with other students. The principal will contact the parent or legal guardian. Law enforcement officials will be involved if deemed necessary. After proper notification, if the parent or guardian cannot or will not come to school, a letter will be sent to them describing the circumstances. Consequences may include the following:

A) The student will be suspended from five (5) days to a full semester out of school.

B) Student may be required to attend in school or out of school counseling sessions.

The extent of violence, safety and discipline problems we experience have been minimal. We have had fights which resulted in suspension for the Student(s) participating and/or instigating the problem. Fighting or violent behavior in any form is not tolerated and is dealt with on an individual basis. The issue of safety is always an important focus for our school. From kindergarten to the high school we place a great deal of emphasis and importance on this area. The discipline problems we experience at each site are very typical for the age group involved. The discipline policies in place at each site have been effective and will continue to be enforced as needed.

3. COMPREHENSIVE PLAN

Tecumseh Public Schools believe all students have a right to come to school and learn in a healthy environment with clear minds. It is our belief that most youth do not use drugs. Our curriculum should, therefore, enhance the development of life skills that keep students from using drugs/alcohol. It focuses on positive prevention, building academic and life skills, developing decision making skills, and providing appropriate adult guidance.

The curriculum will present the message that using illegal drugs/alcohol is wrong and harmful. To combat student drug/alcohol use, the entire community must be involved. Cooperation between parents, school, students, law enforcement authorities, and religious and community organizations is essential if we are to make a difference.

Each building, because of our grade center orientation, will have their own age appropriate curriculum based on the overall philosophy and coordinated to bring about a strong K-12 program. "Developing Capable People," by Dr. Stephen H. Glenn, will be the central program used to build self-

esteem, decision making skills, and communication skills. Training has been ongoing for all of our teachers. The "Developing Capable People" program emphasizes self-reliance and the skills necessary to gain that status. It trains personnel in the process to enable students to gain necessary skills to be self-reliant and yet interconnected to their peers and society. It is an ongoing process based on treating people, regardless of age, with respect and dignity.

Krouch (Kindergarten)

Krouch. being an early childhood center, emphasizes self-worth and getting along with others in their curriculum. They have access to an elementary counselor one day each week and the counselor will work with the children in group settings on an ongoing basis. Areas covered will include sharing, feelings, friends, helpers, safety, etc. Videos, We Awareness, Learning to Live Drug Free, and DARE materials will be utilized.

Krouch school will also take part in the Red Ribbon Campaign, an intensive one week drug education program for the entire community. Age appropriate activities will be organized and coordinated through the regular classrooms. Speakers from various sources will serve as resource personnel throughout the year and visit the regular classrooms.

Barnard (Pre-l st. 1 st and 2nd Grades)

The "Developing Capable People" program is in place at Barnard and is the backbone of the drug/alcohol prevention program there. Through the goals and objectives of the program students will begin to establish good decision making skills, positive self-esteem, cooperative and community solutions to problems, and self-reliance.

The elementary counselor at Barnard will meet with each class weekly throughout the year utilizing various materials such as filmstrips, Learning to Live Drug Free, and Kids are People Too from DARE. Individual counseling incorporating Dr. Glenn's philosophies is scheduled anytime students need help. Another technique for helping students who are experiencing problems is a counselor led problem solving class. Directed play offers the students a method of interacting positively with peers. Barnard takes part in the yearly Red Ribbon Campaign with activities scheduled for the regular classroom and PE programs.

Application for: [Logo]
Safe and Drug-Free Schools
and Communities
1996-97 School Year (FY97)

Sandy Garrett
State Superintendent of Public Instruction
Oklahoma State Department of Education

District Information

Complete this application to apply for funds under the Safe and Drug-Free Schools and Communities program. A typewritten original copy of the district's application must be received or postmarked not later than Friday, May 26, 1995. Mail or hand deliver (DO NOT FAX) to: Health/Safety and Physical Education Section, State Department of Education, Room 315, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Direct questions or concerns to: Dr. Roy Allen (405) 265-4255 and/or Ms. Lisa Easley-Gage (405) 521-4507.

TYPE OF APPLICATION
Single District [X]
*Consortium

*If applying as a consortium, attach a list of all participating LEAs.

County Name and Number: Pottawatomie 63
District Name and Number: Tecumseh I092
Superintendent: Dr. Jim V. Myers
Mailing Address: 302 S. 9th
City, State, Zip: Tecumseh, OK 74873
Telephone: 405/598-3739
Contact person for the Safe and Drug-Free Schools grant:
Marty Lewis, Assistant Superintendent
(405) 598-3739 (405) 598-3739
(School number) (Summer number)

I hereby certify that we will comply with all assurances as set forth in the Safe and Drug-Free Schools and Communities Act of 1994.

Jim V. Myers
Signature of Superintendent

FOR SDE USE ONLY Signature of Approval Approval Date Allocation	**REMINDER** Attach all participating private nonprofit school applications to this application. DUE DATE JUNE 28, 1996

2. Analysis of Current Drug Use and Student Violence

Through annual drug use and violence surveys given to our students, we have gained useful information regarding our student population. This information allows us to more objectively evaluate the extent of the drug, alcohol and tobacco use among our students. It also gave us information concerning not only the use but the type most frequently used, the location of use, the extent the students see these items used at school and away from school. Included in the survey was a section on violence which assists us in addressing another area of concern regarding our young people.

The use of tobacco and alcohol continue to be our number one problems. Our students utilize that alcohol primarily on the weekends and use tobacco, especially smokeless tobacco, on a more regular basis. Other types of drugs including, controlled dangerous substances, are present but have not identified themselves as major problems at this time. Per Board policy, it is expressly forbidden to use, distribute, and/or possess alcohol, illicit drugs or other chemical substances on school property at any time by anyone. Any case involving violation of this policy is to be reported to the principal or school official in charge. Should any student be under the influence of alcohol and/or drugs he/she will be immediately removed from contact with other students. Parents will be contacted in these cases and law enforcement officials will be notified if deemed necessary. Consequences may include the following:

1. The student will be suspended from five (5) days to a full semester out of school.
2. The student may be required to attend in school or out of school counseling sessions.

Minimal problems have been experienced due to violence, safety and discipline problems. Some fights have taken place,

in those cases suspensions have be implemented for the student(s) participating and/or instigating the problem. Fighting or violent behavior of any form is not tolerated and is dealt with on an individual basis. The issues of violence, safety and discipline are very important areas for our district. The discipline policies in place at each site have been effective in dealing with the problems and will continue to be renewed and enforced as needed.

3. Comprehensive Plan

Tecumseh Public Schools believe all students have a right to come to school and learn in a healthy environment with clear minds. It is our belief that most youth do not use drugs. Our curriculum should, therefore, enhance the development of life skills that keep students from using drugs/alcohol. It focuses on positive prevention, building academic life skills, developing decision making skills, and providing appropriate adult guidance.

Our curriculum will continue to focus on presenting the message that using illegal drugs/alcohol/tobacco is wrong and harmful. To combat use of these substances we will try to enlist the help and support of the entire community .Cooperation among parents, schools, students, law enforcement authorities, and religious and community organizations is essential if we are to make a difference.

Each building, because of our grade center orientation, will have their own age appropriate curriculum based on the overall philosophy and coordinated to bring about a strong K-12 program. "Developing Capable People," by Dr. Stephen H. Glenn and "Love and Logic," by Jim Fay and Foster Cline, will be central pans of our efforts to build self- esteem, decision making skills, and communication skills. Training has been ongoing for all our teachers with both of these programs. These two programs complement each other

Safe and Drug-Free
Schools and
Communities
1997-98 School Year (FY98)

[Logo]

Sandy Garrett
State Superintendent of Public Instruction
Oklahoma State Department of Education

63 POTTAWATOMIE I092 TECUMSEH

SCHOOL DISTRICT EXPENDITURES

TYPE OF APPLICATION

Single District [X]

*Consortium

*If applying as a consortium, attach a list of all participating LEAs.

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ER CAP	3,557	3,687	3.65	Direct

Rs. Lisa

County Name and Number: Pottawatomie 63

District Name and Number: Tecumseh I092

Superintendent: Dr. Jim V. Myers

Mailing Address: 302 South 9th Street

City, State, Zip: Tecumseh, OK 74873

Telephone: (405) 598-3739

Contact person for the Safe and Drug-Free Schools grant:

Danny Jacobs

(405) 598-3739 (School number)

(405) 598-3739 (Summer number)

I hereby certify that we will comply with all assurances as set forth in the Safe and Drug-Free Schools and Communities Act of 1994.

Jim V. Myers
Signature of Superintendent

FOR SDE USE ONLY

Lisa Easley-Gage — Signature of Approval

June 3, 1997 — Approval Date

10,929.00 — Allocation

REMINDER

Attach all participating private nonprofit school applications to this application.

DUE DATE
MAY 30, 1997

Sandy Garrett [Logo]
State Superintendent of Public Instruction
Oklahoma State Department of Education
Safe and Drug-Free Schools and Communities
1998-99 School Year (FY99)

District Information

Complete this application to apply for funds under the Safe and Drug-Free Schools and Communities program. A typewritten original copy of the district's application must be received or postmarked not later than Single District Friday, May 29, 1998. Mail or hand deliver (DO NOT FAX) to:

Health/Safety and Physical Education Section, State Department of Education, Room 315, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Direct questions or concerns to: Ms. Lisa Easley-Gage (405) 521-4507.

TYPE OF APPLICATION
Single District
*Consortium

County Name and Number: Pottawatomie 63
District Name and Number: Tecumseh I092
Superintendent: Tom Wilsie
Mailing Address: 302 S. 9th
City, State, Zip: Tecumseh, OK 74873
Telephone: 405/598-3739
Contact person for the Safe and Drug-Free Schools grant:
Danny Jacobs
(405) 598-3739 (School number)
(405) 598-3739 (Summer number)

*If applying as a consortium, attach a list of all participating LEAs.
participating LEAs.

I hereby certify that we will comply with all assurances as set forth in the Safe and Drug-Free Schools and Communities Act of 1994.

Tom Wilsie
Signature of Superintendent

FOR SDE USE ONLY	
Signature of Approval / Approval Date	DUE DATE: FRIDAY MAY 29, 1998
Allocation	

2. Analysis of Current Drug Use and Student Violence (continued)

The use of tobacco and alcohol continue to be our number one problems. Our students utilize alcohol primarily on the weekends and use tobacco, especially smokeless tobacco, on a more regular basis. Other types of drugs including controlled dangerous substances, are present but have not identified themselves as major problems at this time. Per Board policy, it is expressly forbidden to use, distribute, and/or possess alcohol, illicit drugs or other chemical substances on school property at any time by anyone. Any case involving violation of this policy is to be reported to the principal or school official in charge. Should any student be under the influence of alcohol and/or drugs he/she will be immediately removed from contact with other students. Parents will be contacted in these cases and law enforcement officials will be notified if deemed necessary. Consequences may include the following:

1. The student will be suspended from five (5) days to a full semester out of school.
2. The student may be required to attend in school or out of school counseling sessions.

Minimal problems have been experienced due to violence. safety and discipline problems. We have remained somewhat immune from gang activity. but staff members will continue to be trained in the identification and proper response to such activity. Some fights have taken place, in those cases suspensions have been implemented for the student(s) participating and/or instigating the problem. Fighting or violent behavior of any form is not tolerared and is deal with on an individual basis. The issues of violence, safety and discipline are very important areas for our district. The discipline policies in place at each site have been effective in dealing with the problems and will continue to be renewed and enforced as needed.

TECUMSEH PUBLIC SCHOOLS
STUDENT ACTIVITIES DRUG TESTING POLICY
Athletics-Cheerleader-Pom Pon-Band-Vocal-FFA-FHA-Academic Team

The Tecumseh Board of Education in an effort to protect the health and safety of its extra-curricular activities students from illegal and/or performance-enhancing drug use and abuse, thereby setting an example for all other students of the Tecumseh Public School District, proposes to adopt the following policy for drug testing of activity students.

STATEMENT OF PURPOSE AND INTENT

Although the Board of Education, administration, and staff desire that every student in the Tecumseh Public School District refrain from using or possessing illegal drugs, district officials realize that their power to restrict the possession or use of illegal and performance-enhancing drugs is limited. Therefore, this policy governs only performance-enhancing and illegal drug use by students participating in extra-curricular activities. The sanctions imposed for violations of this policy will be limitations solely upon limiting the opportunity of any student determined to be in violation of this policy to a student's privilege to participate in extra-curricular activities. No suspensions from school or academic sanctions will be imposed for violations of this policy. This policy supplements and complements all other policies, rules, and regulations of the Tecumseh Public School District regarding possession or use of illegal drugs.

Participation in school-sponsored extra-curricular activeities at the Tecumseh Public School District is a privilege. Students who participate in these activities are respected by the student body and are representing the school district and the community. Accordingly, students in extra-curricular activities carry a responsibility to themselves, their fellow students, their parents and their school to set the highest

possible examples of conduct, sportsmanship, and training, which includes avoiding the use or possession of illegal drugs. Additionally, this school district is contracted to follow the rules and regulations of the OSSAA whose Rule No. 4, Section 1 (a) specifically states: *"A student whose conduct or character at school is under discipline or whose conduct or character outside the school is such as to reflect discredit upon the school shall be ineligible until reinstated."*

The purposes of this policy are five-fold:

1. To educate students of the serious physical, mental and emotional harm caused by illegal drug use.
2. To alert students with possible substance abuse problems to the potential harms that drug use poses for their physical, mental, and emotional well-being and offer them the privilege of competition as an incentive to stop using such substances.
3. Ensure that students adhere to a training program that bars the intake of illegal and performance-enhancing drugs.
4. To prevent injury, illness, and harm for students that may arise as a result from illegal and performance-enhancing drug use.
5. To offer students practices, competition and school activities free of the effects of illegal and performance-enhancing drug use.

Illegal and performance-enhancing drug use of any kind is incompatible with the physical, mental, and emotional demands placed upon participants in extra-curricular activities and upon the positive image these students project to other students and to the community on behalf of the Tecumseh Public School District. For the safety, health and well being of students in extra-curricular activities, the

Tecumseh Public School District has adopted this policy for use by all participating in extra-curricular activities in grades 7-12.

The administration may adopt regulations to implement this policy.

I. Definitions

"Activity student" means a member of any middle school or high school Tecumseh Public School District sponsored extra-curricular organization. This includes any student that represents Tecumseh Schools in any extra-curricular activity such as FFA, FHA, Academic Team, Band, Vocal, Pom Pon, Cheerleader and Athletics.

"Drug use test" means a scientifically substantiated method to test for the presence of illegal or performance-enhancing drugs or the metabolites thereof in a person's urine.

"Random Selection Basis" means a mechanism for selecting activity students for drug testing that:

A. results in an equal probability that any activity student from a group of activity students subject to the selection mechanism will be selected, and

B. does not give the School District discretion to waive the selection of any activity student selected under the mechanism.

"Illegal drugs" means any substance which an individual may not sell, possess, use, distribute or purchase under either Federal or Oklahoma law. *"Illegal drugs"* includes, but is not limited to, all scheduled drugs as defined by the Oklahoma Uniform Controlled Dangerous Substance Act, all prescription drugs obtained without authorization, and all prescribed and over-the-counter drugs being used for an abusive purpose. "Illegal drugs" shall also include alcohol.

"Performance-enhancing drugs" include anabolic steroids and any other natural or synthetic substance used to increase muscle mass, strength, endurance, speed or other athletic ability. The term *"performance-enhancing drugs"* does not include dietary or nutritional supplements such as vitamins, minerals and proteins which can be lawfully purchased in over-the counter transactions.

"Positive" when referring to a drug use test administered under this policy means a toxicological test result which is considered to demonstrate the presence of an illegal or a performance-enhancing drug or the metabolites thereof using the standards customarily established by the testing laboratory administering the drug use test.

"Reasonable suspicion" means a suspicion of illegal or performance-enhancing drug use based on specific observations made by coaches/ administrators/sponsors of the appearance, speech, or behavior of an activity student; the reasonable inferences that are drawn from those observations; and/or information of illegal or performance-enhancing drug use by an activity student supplied to school officials by other students, staff members, or patrons.

II. Procedures

A physical examination signed by a parent/guardian is required before a student may participate on a Tecumseh School athletic team. A urine screen to detect the presence of illegal or performance-enhancing drugs which could have a harmful effect on the prospective athlete's health and athletic performance will be included as part of that physical examination. For non-athletic activities a urine screen test only will be required.

Each activity student shall be provided with a copy of the "Student Drug Testing Consent Form" which shall be read, signed and dated by the student, parent or custodial guardian

and coach/sponsor before such student shall be eligible to practice or participate in any extra-curricular activities. The consent requires the activity student to provide a urine sample: (a) as part of the student's annual physical or for eligibility for participation; (b) when the activity student is selected by the random selection basis to provide a urine sample; and (c) at any time when there is reasonable suspicion to test for illegal or performance-enhancing drugs. *No student shall be allowed to practice or participate in any extra-curricular activities unless the student has returned the properly signed "Student Drug Testing Consent Form."*

Prior to the commencement of drug testing each year an orientation session will be held with each student athlete or participant in extra-curricular activities to educate them of the sample collection process, privacy arrangements, drug testing procedures and other areas which may help to reassure the activity student and help avoid embarrassment or uncomfortable feelings about the drug testing process.

Each student athlete or participant in extra-curricular activities shall receive a copy of the Student Activities Drug Testing Policy. The head coach or sponsor shall be responsible for explaining the Policy to all prospective students, and for preparing an educational presentation to acquaint the student with the harmful consequences of drug and alcohol use and abuse.

All student athletes shall be required to provide a urine sample for drug use testing for illegal drugs as part of their annual physical examination. Student athletes who have physical examinations done by their personal physician must nonetheless comply with the policy requirements set out below regarding drug use testing. *A student who moves into the district after the school year begins will have to undergo a drug test or provide proof of a clear drug test administered during the school year before they will be eligible for participation.*

Drug use testing for extra-curricular students will also be chosen on a random selection basis monthly from a list of all extra-curricular students who are involved in off-season or in-season activities. The Tecumseh Public School District will determine a monthly number of student names to be drawn at random to provide a urine sample for drug use testing for illegal or performance-enhancing drugs.

In addition to the drug tests required above, any activity student may be required at any time to submit to a test for illegal or performance-enhancing drugs, or the metabolites thereof when an administrator, coach, or sponsor has reasonable suspicion of illegal or performance-enhancing drug use by that particular student.

The Tecumseh Public School District will set a fee to be collected from the student when this consent form is signed and returned to the coach or sponsor before the beginning of the season.

Any drug use test will be administered by or at the direction of a professional laboratory chosen by the Tecumseh Public School District. The professional laboratory shall be required to use scientifically validated toxicological testing methods, have detailed written specifications to assure chain of custody of the specimens, and proper laboratory control and scientific testing.

All aspects of the drug use-testing program, including the taking of specimens, will be conducted so as to safeguard the personal and privacy rights of the student to the maximum degree possible. The test specimen shall be obtained in a manner designed to minimize intrusiveness of the procedure. In particular, the specimen must be collected in a restroom or other private facility behind a closed stall. The principal/athletic director shall designate a coach or school employee of the same sex as the student to accompany the student to a restroom or other private facility behind a closed

stall. The monitor shall not observe the student while the specimen is being produced, but the monitor shall be present outside the stall to listen for the normal sounds of urination in order to guard against tampered specimens and to insure an accurate chain of custody. The monitor shall verify the normal warmth and appearance of the specimen. If at any time during the testing procedure the monitor has reason to believe or suspect that a student is tampering with the specimen, the monitor may stop the procedure and inform the principal/athletic director who will then determine if a new sample should be obtained. The monitor shall give each student a form on which the student may list any medications legally prescribed for the student, he or she has taken in the preceding thirty (30) days. The parent or legal guardian shall be able to confirm the medication list submitted by their child during the twenty-four (24) hours following any drug test. The medication list shall be submitted to the lab in a sealed and confidential envelope and shall not be viewed by district employees.

An initial positive test result will be subject to confirmation by a second and different test of the same specimen. The second test will use the gas chromatography/mass spectrometry technique. A specimen shall not be reported positive unless the second test utilizing the gas chromatography/mass spectrometry procedure is positive for the presence of an illegal drug or the metabolites thereof. The unused portion of a specimen that tested positive shall be preserved by the laboratory for a period of six (6) months or the end of the school year, whichever is shorter. Student records will be retained until the end of the school year.

III. Confidentiality

The laboratory will notify the principal/athletic director or designee of any positive test. To keep the positive test results confidential, the principal/athletic director or designee will

only notify the student, the head coach/sponsor, and the parent or custodial guardian of the student of the results. The principal/athletic director or designee will schedule a conference with the student and parent or guardian and explain the student's opportunity to submit additional information to the principal/athletic director or to the lab. The Tecumseh Public School District will rely on the opinion of the laboratory which performed the test in determining whether the positive test result was produced by something other than consumption of an illegal or performance-enhancing drug.

Test results will be kept in files separate from the student's other educational records, shall be disclosed only to those school personnel who have a need to know, and will not be turned over to any law enforcement authorities.

IV. Appeal

An extra-curricular student who has been determined by the principal/athletic director to be in violation of this policy shall have the right to appeal the decision to the Superintendent or his/her designee(s). Such request for a review must be submitted to the Superintendent in writing within five (5) calendar days of notice of the positive test. A student requesting a review will remain eligible to participate in any extra-curricular activities until the review is completed. The Superintendent or his/her designee(s) shall then determine whether the original finding was justified. No further review of the Superintendent's decision will be provided and his/her decision shall be conclusive in all respects. Any necessary interpretation or application of this policy shall be in the sole and exclusive judgment and discretion of the Superintendent which shall be final and non-appealable.

V. Consequences

Any extra-curricular student who tests positive in a drug test under this policy shall be subject to the following restrictions:

A. *For the First Offense:*

The parent/guardian will be contacted immediately and a private conference will be scheduled to present the test results to the parent/guardian. A meeting will then be set up with the student, parent/guardian, athletic director, and principal concerning the positive drug test. In order to continue participation in the activity the student and parent/guardian must, within five (5) days of the joint meeting, show proof that the student has received drug counseling from a qualified drug treatment program or counseling entity. Additionally, the student must voluntarily submit to a second drug test to be administered within two (2) weeks in accordance with the testing provisions of this policy.

If parent/guardian and student agree to these provisions, the student will continue to participate in the activity. Should the parent/student not agree to these provisions the consequences listed in this policy for the second offense will be imposed.

B. *For the Second Offense:*

Suspension from participation in *all* extra-curricular activities for (14) calendar days, and successful completion of four (4) hours of substance abuse education/counseling provided by the school. The student may not participate in any meetings, practices, scrimmages or competitions during this period. The student will be randomly tested monthly for the remainder of the school year. The time and date will be unknown to the student and determined by the principal/athletic director or designee.

These restrictions and requirements shall begin immediately, consecutive in nature, unless a review appeal is filed following receipt of a positive test. Provided, however, a student who on his or her own volition informs (self-refers) the athletic director, principal, or coach/sponsor of usage before being notified to submit to a drug use test will be allowed to remain active in all extra-curricular activities. Such student will however, be considered to have committed his/her first offense under the policy, and will be required to re-test as would a student who has tested positive.

C. *For the Third Offense (in the same school year):*

Complete suspension from participation in *all* extra-curricular activities including all meetings, practices, performances, and competition for the remainder of the school year, or eighty-eight school days (1 semester) whichever is the longer.

VI. Refusal to Submit to Drug Use Test

A participating student who refuses to submit to a drug use test authorized under this policy, shall not be eligible to participate in any extra-curricular activities including all meetings, practices, performance and competitions for the *remainder of the school year*. Additionally, such student shall not be considered for any extra-curricular activity honors or awards given by the school.

* * * *

Tecumseh Public Schools is committed to cooperating with parents/guardians in an effort to help students avoid illegal drug use. The Tecumseh Public School District believes accountability is a powerful tool to help some students avoid using drugs and that early detection and intervention can save lives.

Tecumseh Public School District
Student Drug Testing Consent Form

Statement of Purpose and Intent

Participation in school sponsored extra-curricular activities at the Tecumseh School District is a privilege. Extra-curricular students carry a responsibility to themselves, their fellow students, their parents, and their school to set the highest possible examples of conduct, which includes avoiding the use or possession of illegal drugs.

Drug use of any kind is incompatible with participation in extra-curricular activities on behalf of the Tecumseh Public School District. For the safety, health, and well being of the student of the Tecumseh Public School District, the Tecumseh Public School District has adopted the attached Student Activities Drug Testing Policy and the Student Drug Testing Consent for use by all participating students at the middle school and high school levels.

Participation in Extra-Curricular Activities

Each extra-curricular activity student shall be provided with a copy of the Student Activities Drug Testing Policy and Student Drug Testing Consent which shall be read, signed and dated by the student, parent or custodial guardian, and coach/sponsor before such student shall be eligible to practice or participate in any extra-curricular activities. The consent shall be to provide a urine sample: a) as part of their annual physical or for eligibility for participation; b) as chosen by the random selection basis; and c) at any time requested based on reasonable suspicion to be tested for illegal or performance-enhancing drugs. No student shall be allowed to practice or participate in any extra-curricular activity unless the student has returned the properly signed Student Drug Testing Consent.

_____

Student's Last Name First Name MI

I understand after having read the "Student Activity Drug Testing Policy" and "Student Drug Testing Consent" that, out of care for my safety and health, the Tecumseh Public School District enforces the rules applying to the consumption or possession of illegal and performance-enhancing drugs. As a member of a Tecumseh extra-curricular activity, I realize that the personal decision that I make daily in regard to the consumption or possession of illegal or performance-enhancing drugs may affect my health and well-being as well as the possible endangerment of those around me and reflect upon any organization with which I am associated. If I choose to violate school policy regarding the use or possession of illegal or performance enhancing drugs any time while I am involved in in-season or off-season activities, I understand upon determination of that violation I will be subject to the restrictions on my participation as outlined in the Policy.

_____

Signature of Student Date

We have read and understand the Tecumseh Public School District "Student Activities Drug Testing Policy" and "Student Drug Testing Consent." We desire that the student named above participate in the extra-curricular programs of the Tecumseh Public School District, and we hereby voluntarily agree to be subject to its terms. We accept the method of obtaining urine samples, testing and analysis of such specimens, and all other aspects of the program. We further agree and consent to the disclosure of the sampling, testing and results as provided in this program.

_____

Signature of Parent or Custodial Guardian Date

_____

Signature of Coach Team

Medication List

I, _____, am currently taking or have taken the following drugs, substances, or medications in the last thirty (30) days: (Medications must be legally prescribed for extra-curricular activity student.)

_____

_____

Additional Information: _____

_____